

*** Consumer Federation of America * Consumers Union ***
*** Kids in Danger * National Research Center for Women & Families ***
*** Public Citizen * U.S. Public Interest Research Group ***

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Office of the Secretary
Consumer Product Safety Commission
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**Comments of Consumer Federation of America, Consumers Union, Kids in Danger,
National Research Center for Women & Families, Public Citizen and the U.S.
Public Interest Research Group to the U.S. Consumer Product Safety Commission
on 16 CFR Part 1500, “Labeling Requirement for Toy and Game Advertisements,”
Notice of Proposed Rulemaking with Respect to Internet Advertisements**

Introduction

Consumer Federation of America (CFA), Consumers Union of the U.S., Inc. (CU), Kids in Danger, National Research Center for Women & Families, Public Citizen and the U.S. Public Interest Research Group (jointly “We”) submit the following comments in response to the U.S. Consumer Product Safety Commission’s (“CPSC” or “Commission”) in the above-referenced Notice of Proposed Rulemaking (“NPR”) on “Labeling Requirement for Toy and Game Advertisements.”¹ The CPSC has published this Notice seeking comments and information on the implementation of section 105 of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”) which amends the Federal Hazardous Substances Act.

Overall, we support the measures included in the NPR to better protect children from the hazards addressed by section 24 of the Federal Hazardous Substances Act (“FHSA”). Section 24 of the FHSA proscribes precautionary labeling requirements for

¹ “Labeling Requirement for Toy and Game Advertisements,” 73 Fed. Reg. 194 (October 6, 2008).

the packaging of: (a) toys or games that are intended for use by children from 3 to 6 years old and contain small parts; and (b) balloons, small balls and marbles intended for use by children 3 years and older, or any toy or game that contains such a balloon, small ball, or marble. Section 105 of the CPSIA extends this mandate by – where the packaging of the toy or game would require the cautionary statement -- requiring advertising for such products (that contains a direct means for purchase or order) to include the same cautionary statement (“cautionary statement”).

Background

Section 105 of the CPSIA requires the CPSC to promulgate a final rule “with respect to catalogues and other printed material” but does not explicitly require CPSC to promulgate a rule regarding advertisements on the Internet. The CPSC has determined that the Commission will propose requirements for Internet advertising. We support CPSC’s decision to propose this rule on Internet advertising because it will provide clarity for entities that use the Internet to sell relevant consumer products. Because we believe that this information is critical for consumers purchasing toys online to have at the point of purchase, we commend the agency for its timely promulgation of this NPR.

Section 105 of the CPSIA requires advertisements for toys, including those selling toys on the Internet or through catalogues, to provide the same warning labels that are currently required on toy packaging. When section 24 of the FHSA was originally drafted, most people purchased toys in brick-and-mortar stores. Today, however, an increasing number of consumers who purchase toys on the Internet or through catalogues never have the opportunity to see the toy’s package before they make a purchase. Due to increasing numbers of online purchases the ‘point of purchase’ is no longer only in the store. This provision, therefore, would protect parents and children by requiring that online retail sites and catalogues post the same warning information required on store packaging on their website, so that consumers are aware of potential safety issues before placing their orders. Parents should have the same information whether they choose to buy toys in a regular store, on the Internet or through a catalogue. Similarly, consumers must be able to make well-informed decisions when purchasing toys for children.

Recommendations

Importantly, this labeling must be apparent to consumers at the point of purchase so that they can make informed decisions about potential safety hazards and buy toys appropriate for their children. We offer the following details about the elements that should be required to ensure that the contents of the warning labels are effectively communicated to consumers:

- 1) While many requirements specified in 16 CFR 1500.121 may be applied to cautionary labeling on the Internet, as discussed in the NPR, not all requirements are applicable to Internet advertising.
 - a. **Type Size-** CPSC correctly points out that the minimum type size requirements specified in 16 CFR 1500.121 cannot be applied to Internet advertising since the size of a consumer’s Internet browser application window or the consumer’s computer monitor size could vary widely. However, we agree with CPSC’s proposed section 1500.20(f)(2)(i) that “the type size of the cautionary statement be at least equal to the largest text in the advertisement that describes the function, use, or characteristics of the toy or game advertised.”
 - b. **Inapplicable Requirements** – In its NPR, the CPSC does not mention that some other subsections of 16 CFR 1500.121 are not applicable:
 - i. 16 CFR 1500.121 (b)(1) which requires horizontal placement of labeling statements. This provision is based upon the base of the package and thus is not relevant to Internet advertising.
 - ii. 16 CFR 1500.121(c)- Conspicuousness- much of this section does not apply to Internet advertising because it relates to the principal display panel, as CPSC points out in the proposed rule regarding type size. Many of these provisions of this section- (1) - (2) do not make sense to apply to Internet advertising: areas of principal display panel, type size requirements and while (3) - (6) should

apply as those sections include typestyle- proportion, signal word and statements of hazard- capital letters, and accompanying literature.

- 2) **Placement-** We support CPSC’s proposed section 1500.20(f)(2)(ii) that requires the cautionary statement to be located “immediately before any other statements in the advertisement that describes the function, use, or characteristics of the article being advertised (for example, the product description).” We agree that it is important that this critical safety information be prominently displayed, just as is articulated for product labels in 16 CFR 121(b). As such, the cautionary statements must be visible to consumers clearly, consistently and initially, before other descriptive product information.

- 3) **No Abbreviated Warnings-** We agree with the Commission’s preliminary finding that the use of abbreviated warnings in place of full text warnings “is neither necessary nor desirable for Internet advertisements.” Use of abbreviated warnings is not appropriate for Internet advertisements for the following reasons.
 - Many consumers may find the page sought by using a search engine that directly links them to the specific product page. For this reason, placing the list of complete warnings on the home page -- as is contemplated for catalogues – would be ineffective; and
 - Cost, space, and production time limitations do not apply to Internet advertisements in the same way as print catalogue advertisements.

- 4) **No Links-** In its NPR, proposed section 1500.20(f)(2)(ii), requires that the cautionary statement must appear before the product description. We are concerned that some advertisers may try to substitute this requirement by placing a link to cautionary statement. We therefore urge the CPSC to clarify that this requirement cannot be satisfied solely through a link to another page. We believe that this critical safety information must appear on the same page as – and

immediately before – other information describing the product. As such, requiring a consumer to click on a link to access the cautionary statement is unacceptable.

Conclusion

We urge the Commission to adopt the foregoing recommendations in its implementation of section 105 of the CPSIA, as it relates to Internet advertisements..

Respectfully submitted,

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