

# First-Ever Criminal Consumer Product Safety Improvement Act (CPSIA) Charges Brought for the Importation and Sale of Hazardous Toys

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On February 4, 2013, a 24-count federal indictment was issued charging multiple individuals and companies with importing and trafficking hazardous toys from China into the United States.<sup>[1]</sup> The **Consumer Product Safety Improvement Act of 2008 (CPSIA)**<sup>[2]</sup> added stringent limits on the amount of lead and phthalates in children's products, including toys. This case, brought by the United States Attorney's Office for the Eastern District of New York and jointly investigated by a number of federal, state and local agencies, including the Consumer Product Safety Commission (CPSC), is the first criminal case alleging violations of these requirements.

The indictment charges that over an 8-year period, Customs and Border Protection seized children's toys imported into the United States by the defendants on 33 separate occasions. Seventeen of the seizures allegedly involved toys containing lead, excessive phthalate levels, accessible battery compartments, and small parts that presented choking, aspiration or ingestion hazards – all prohibited from distribution and sale under the Consumer Protection Safety Act (CPSA).<sup>[3]</sup> Significant copyright and trademark violations are also alleged. According to the indictment, following each seizure, the companies were provided written notice detailing the reason for the seizure, including the specific safety violations presented by the toys. The defendants allegedly shifted operations from one company to another in order to continue their operations.

Congress passed the CPSIA in response to highly publicized recalls of lead-tainted toys made in China in 2007 and 2008. The CPSIA amended the CPSA, enhancing its enforcement provisions and creating a variety of new product requirements for toys and certain other children's products.<sup>[4]</sup> The CPSIA expanded the scope of liability under the CPSA to include not only violations of the CPSA but also violations of any other statutes enforced by the CPSC, including violations of rules, regulations or bans under the Federal Hazardous Substances Act.<sup>[5]</sup> The CPSIA also increased criminal penalties for violations of the CPSA such that knowing and willful violations of that statute are punishable by up to five years' imprisonment,<sup>[6]</sup> and the criminal violation of any statute enforced by the CPSC can result in the forfeiture of any assets associated with the violation.<sup>[7]</sup>

With respect to product requirements, the CPSIA modified the CPSIA's lead-related provisions, setting forth the requirement that, with limited exceptions, all children's products manufactured after

August 14, 2011, must contain no more than 100 parts per million of total lead content in accessible parts.<sup>[8]</sup> The CSPIA also banned certain types of phthalates, which are chemical plasticizers, from being used in children's toys and certain child care articles in any amount greater than 0.1 percent.<sup>[9]</sup>

The February 4, 2013 indictment illustrates the broad enforcement consequences of the CSPIA, particularly for the lead and phthalate thresholds set for toys and children's products. The forfeiture counts of the indictment are also a reminder of the CSPA's broad sweeping forfeiture provisions which include the ability to seize assets such as bank accounts and real estate properties. Indeed, the number of violative imported units intercepted at U.S. ports has significantly increased over the course of the past year,<sup>[10]</sup> with additional seizures of nearly 30,000 toys with excessive lead levels announced by the CPSC as recently as February 8, 2013.<sup>[11]</sup>

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[1] Indictment, *United States v. Hu*, 13 Cr. 00068 (E.D.N.Y. filed Feb. 4, 2013); see DOJ news release, "Five Individuals and Five Corporations Charged in New York for Importing and Selling Hazardous and Counterfeit Toys" (Feb. 6, 2013), <http://www.justice.gov/opa/pr/2013/February/13-crm-162.html>.

[2] Pub. L. 110-314 (Aug. 14, 2008).

[3] 15 U.S.C. § 2051 et seq.

[4] See Beveridge & Diamond, P.C., "CPSC Implements New Consumer Product Requirements" (2008), <http://www.bdlaw.com/news-417.html>; "Consumer Product Safety Improvement Act: One-Year Update (2009)", <http://www.bdlaw.com/assets/attachments/09-15-09%20CPSIA%20Update.pdf>;

"Congress Fixes CPSIA Problems" (2011), <http://www.bdlaw.com/assets/attachments/2011-09-02%20Congress%20Fixes%20CPSIA%20Problems.pdf>.

[5] CPSIA § 216(a)(1), 15 U.S.C. § 2068(a)(1).

[6] CPSIA § 217(c), 15 U.S.C. § 2070(a).

[7] CPSIA § 217(d), 15 U.S.C. § 2070(c)(1).

[8] CPSIA § 101(a)(2)(C), 15 U.S.C. § 1278a(a)(2)(C).

[9] CPSIA § 108(a), 15 U.S.C. § 2057c(a).

[10] CPSC news release, "Port Surveillance News: CPSC Stops Nearly 3M Units of Violative Imported Products in 3rd Quarter of Fiscal Year 2012" (January 31, 2013), <http://www.cpsc.gov/en/Newsroom/News-Releases/>.

[11] CBP news release, "CBP and CPSC Seize Lead-Contaminated Toys in San Juan" (Feb. 8, 2013), [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/national/02082013\\_8.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/02082013_8.xml).