

February 09, Special report

Federal Court rules phthalate ban is effective February 10, 2009

From our friends at Grunfeld Desiderio

A U.S. District Court ruled February 5, that the phthalate ban applies to all products offered for sale after February 10, 2009, including existing inventory. This decision reverses a Consumer Product Safety Commission (“CPSC”) opinion letter dated November 17, 2008 which concluded that the prohibition on Phthalates does not apply to merchandise produced before February 10, 2009.

The phthalate and lead standards will therefore both take effect on February 10, 2009 and will apply to goods in inventory and in retail stores as of that date. The phthalate ban applies to toys designed or intended for children 12 years of age and younger and child care articles for children 3 years of age and younger. The ban states that products cannot contain concentrations of more than 0.1% of six named phthalates. Most wearing apparel is not affected by the phthalate standard. However, the CPSC has advised that certain children’s apparel (e.g., children’s sleepwear and bibs for children ages 3 and under) would be considered “child care articles” and must comply with the standard.

There is a slight chance the CPSC will issue a stay, but it probably would not overrule the federal court ruling. We urge you to contact a competent consumer product safety attorney for guidance. If you do not know one, we would be glad to make a referral.

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