



DEALING WITH THE MEDIA – LEAD-TAINTED TOYS

Across the country, reporters hungry for a story have begun to test toys and label them as lead-tainted toys. Once the media accuses a company of exceeding state or federal lead limits, a company and its representatives must be prepared to deal with the crisis. Leaders of the company must draft, implement, and rehearse a communications plan that delivers the appropriate message to the media, customers, and internal employees.

The Typical Reaction to Accusations of Lead-Tainted Toys

Without a proper communications plan, the typical company will admit that its toy contains high amounts of lead, agree to immediately halt distribution, and remove the toy from shelves. When the company learns that its product does not violate any laws or finds room for maneuvering, it will attempt to shift its position. The reporter calls the company's president or chief operating officer and both individuals decline to comment. So the press simply writes, "Gerald England, ABC's chief operating officer, declined to comment for this story." Consumers such as parents hear the story on their way to work or read it on the internet. Regardless of the outcome of the lead testing, parents avoid purchasing the toy, while other parents take the toy away from their children and flood the company with calls requesting a full refund. How may a company avoid such a reaction?

Ensure a Rapid Response: Contact the Media Before the Media Contacts You

Long before the possibility of a problem is detected, the company should designate select personnel to serve as a Rapid Response Team. The Team should have established contacts at local and national media organizations and designate one individual as the Team Spokesperson to communicate with the media.

Once the problem is identified, the spokesperson should outline how the possibility of a problem was detected

and announce whether the issue has been reported to the Consumer Product Safety Commission (CPSC), the federal entity that works with companies to issue recalls in harmful goods. The Rapid Response Team should immediately issue a statement advising consumers, particularly if children are involved, of the remedial measures and disseminate contact information for the company. If necessary, the company should have procedures in place to receive calls from customers, including hotlines and information on the company's website.

Once a company has alerted the problem to the media, the Rapid Response Team must identify the ways that the company can mitigate the harm. For example, when Fisher-Price Inc. recalled eighty-three types of toys due to excessive amounts of lead, the company announced that it had quarantined two-thirds of the toys before they ever arrived on retailers' shelves. Later, the company received widespread praise for its quick response from industry associations, politicians, and the media.

Make the Most of an Unpleasant Situation

The Rapid Response Team should deal with issues in an honest manner to preserve the integrity of the company. By demonstrating how the company will improve and learn from the items involving lead paint, the company will demonstrate its commitment to quality control standards and customers.

Although it may be tempting to publicly declare that your company's product is safe, - in response to a media challenge - there are certain factors to consider before making such a declaration. First, consider whether you have all the relevant facts. Have you interviewed all relevant parts suppliers and associated witnesses? Have you analyzed all relevant testing results? Have you ordered and reviewed testing of a representative sampling of the product? Are you certain which lead standard applies to your product? If not, you should be cautious about making uninformed public declarations about the safety of your product.

Second, what are the implications of making an inadvertent false public statement? Obviously, the loss of consumer trust is a key concern. However, there are legal concerns as well. If you declare the product safe, and it is not, consumers injured by your product may later use your public comment against you in a civil suit for fraud, negligent misrepresentation, wrongful death and/or personal injury claims. Also, if the government becomes involved, it may use the false statement against you in a subsequent governmental inquiry. For example, the U.S. Attorney and/or the State's Attorney General may initiate an investigation and issue subpoenas seeking to know what information you relied upon in making your statement.

Alternatively, if you choose to declare that your product is defective, and voluntarily agree to a recall, you may gain credibility with the public and your investors, but subject your company to civil suits from your suppliers. If you declare a product defective – and these statements are disputed by your suppliers – your suppliers may assert claims against you. For example, you and your suppliers may disagree on the appropriate lead standard to evaluate whether a product is defective.

Responding to a media inquiry about the safety of a product can be challenging. The best course of action is to have a rapid media response team in place at your company. The team should include a media spokesman, the company attorney, management representatives, and company

employees with direct contact with suppliers. Each member of this team should be consulted before any public statements are made to assure the accuracy of the statements.

Companies who face recalls and criticism about their products must always be cautious, but the toy industry in particular must have a heightened sense of awareness of the various state and federal laws that regulate the industry. The Code of Federal Regulations sets forth several standards and guidelines for a company to evaluate its toy product, rather than the media and politicians determining the issues in the public arena.

Finally, time is critical during a crisis. A company must communicate issues to the media and its customers while evaluating its legal obligations in an efficient and professional manner. For example, The Consumer Product Safety Act requires a company to notify the CPSC immediately, meaning within 24 hours, if the company learns that its toy (i) contains a defect, (ii) does not meet consumer product safety standards, (iii) creates an unreasonable risk of serious injury or death, or (iv) fails to comply with a voluntary standard upon which the CPSC has relied. As a company struggles to evaluate this information, it will simultaneously receive calls from the media, the attorney general, politicians, and angry customers. Toy manufacturers and distributors that have prepared for such a crisis and practiced rehearsals will preserve their reputation in the toy industry and set the standard for their competitors.

For more information regarding this topic, please contact:

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