

The Consumer Product Safety Improvement Act of 2008 (CPSIA) is making a difference to the children's footwear market in the United States but is affecting small, entrepreneurial operators much more than big companies. And things are about to become even more difficult.

# CPSIA – two not-so-smooth years later

By Shari Shallard

About two years ago, the United States' Consumer Product Safety Commission (CPSC) enacted the Consumer Product Safety Improvement Act of 2008 (CPSIA). The law, in part, establishes stricter guidelines for the levels of substances such as lead and phthalates in qualifying categories (including children's shoes, toys and apparel) and lays out new testing and documentation requirements for such products.

Parents (fed up with a decade scarred by worrisome product recalls) and consumer advocacy groups (who had been calling for tighter standards) lauded the legislation's aims. But the legislation was met with resistance from a variety of affected entities, ranging from the CEO of the American Apparel and Footwear Association to legions of independent online entrepreneurs, who opposed the law's sweeping nature and feared its potential to bankrupt small businesses.

Since the legislation's inception, groups have formed, blogs have exploded, and the CPSC has produced documents, clarifications, stays, exemptions, and lists and lists of frequently asked questions—all of which continue on to this very day. As recently as October 6, the CPSC issued a document entitled, Final Interpretative Rule: Interpretation of Children's Product—a 79-pager that defines the meaning of Children's Product in the context of CPSIA. Last week, a popular American conservative radio show interviewed a politician on another aspect of CPSIA.

Perhaps it is fair to say that there are more questions about CPSIA's implications than answers, and that an attempt to summarise how CPSIA is affecting the US

*From February 2011, manufacturers will have to carry out testing of children's shoes bound for the US market themselves rather than rely on suppliers to test components.*

CREDIT: LOWA/GDS/CTILLMANN



children's footwear industry is destined to be inadequate. It is that difficulty—the way CPSIA eludes concise description, yet has such a broad reach—that underlies the frustrated buzz around the legislation.

But a snapshot is possible, a glance at who in the children's footwear industry is getting touched by the legislation, who's not, and who is hoping this legislation will just go away.

### Just another day at the office

If the name Heelys doesn't seem familiar, maybe this scene will be: a ten-year-old boy has been walking in front of you for two city blocks, keeping approximately the same pace; suddenly, a stretch of empty pavement opens up and he zips forward, propelled by wheels in the soles of his shoes. Those shoes on wheels are Heelys.

As makers of a shoe that is both multifaceted and favoured by children, Heelys is the kind of company for whom CPSIA could be a true headache; yet, chief executive Tom Hansen is unfazed by the required amendments to his company's practices. "It is just part of doing business," he says.

To date, more than 15 million pairs have been sold around the world. "While the [Heelys] phenomenon spread like wildfire across the United States in 2006 and 2007, Heelys have [more recently] adapted well into other cultures and continue to grow each year," Mr Hansen says. "The majority of the business is now outside of the United States."

Nonetheless, the company applies CPSIA's testing requirements to every Heelys shoe, regardless of its destination. "Heelys abides by all of the manufacturing guidelines regarding CPSIA's restrictions," he says, "whether it is in the United States or overseas."

Mr Hansen points out that testing these unique shoes "certainly is more complicated than for a normal shoe, due to the addition of the wheel and its components." But this, he acknowledges, is just the way they will do things now: CPSIA requirements have become "part of our planning process each season".

Heelys' experience with CPSIA is representative of a larger body of manufacturers and retailers – those that are equipped to cope with CPSIA's new requirements with relative ease. A former manager for VANS shoes has a similarly measured reaction to CPSIA; he looks back at 2008 and 2009 as a time of transition that was relatively uneventful. "Most of that was taken care of at corporate headquarters," he remembers. "They just sort of said 'pull this and pull that'."

For retailers and resellers, CPSIA requires the importer or US manufacturer to furnish certification of testing to its distributors and retailers, or at least provide reasonable access to the certification. At Florida's Running Wild, an athletic store stocked with brand-name lines, manager Wade Beroset says that CPSIA has been "a non-issue" for him. Although plenty of the inventory is sized for children age five through 12—and



*The complexities of Heelys, a trainer with wheels built into the sole, results in a more extensive testing and documentation process. CREDIT: HEELYS*

are therefore subject to the new requirements—it's relatively easy to prove that those mini-running shoes are safe for little feet.

### A nightmare at the office

There are many individuals, though, for whom the mere mention of CPSIA elicits fear, stress, resentment, and confusion. Nowhere is this more evident than on Etsy, a website with the mission to 'enable people to make a living making things, and to reconnect makers with buyers'. With its emphasis on individuals' handmade creations, the Etsy community – which includes hundreds of thousands of sellers in more than 150 countries – represents those most vulnerable to CPSIA's requirements.

Sarah Natividad's Curious Workmanship has been on Etsy since April of 2006, selling hand-crocheted baby booties that look like shoes. Ms Natividad's frustration with CPSIA dates back to its initial implementation. "The way the CPSC handled CPSIA almost destroyed my business," she says. "Six days before the August deadline [a deadline for enforcement that was later extended] ... they came out with a rule that textiles were exempt from lead testing."

Unfortunately, this extension came too late to save Sarah's inventory: "My booties were about to become illegal to sell or even to give away, so I had to sell my entire inventory, which meant clearance prices. I lost just about every bit of the work I'd put into building up my business from nothing."

She says it has taken a year to build her business back to what it was before she unnecessarily cleared out her stock. "At CPSC they do not understand how businesses have to run, how they have to make decisions in advance and can't change direction instantaneously on a regulator's whim." Subsequently, Ms Natividad helped

launch the website [www.whatisthecpsia.com](http://www.whatisthecpsia.com), a forum for peer-to-peer advice, resources, and updates from CPSC.

Another person affected, stay-at-home mother Karen (not her real name), has found herself in both a logistical and moral dilemma. About a year before CPSIA came into effect, Karen had begun a business of making and selling charming made-to-order children's shoes and apparel. She says at that point, her online shop on Etsy was just starting to pick up speed; now, she fears, things may come to a halt.

"I comply as best I can with the CPSIA guidelines," she says. "Luckily, most of my supplies are exempt as my shoes are made of fabric, an exempted material. However, if I choose to use any rubber, beads, buttons, or snaps, then I [must] make sure the supplier has already tested and get those results. The way the law stands right now, though, once the stay is over in February, suppliers' testing will not be enough. I will have to test my products myself."

This stay puts off her obligation to test her final products (even if the individual components were already tested) until February 2011. The extension seems to recognise fundamental flaws in the original law's construction. CPSC Commissioner Anne M. Northup, who voted for the stay, has said: "The Congress which passed the CPSIA meant well, but it lacked understanding of the dire consequences that enactment of this law would entail... Much work remains to be done by this Commission and the Congress to prevent regulations that would impose enormous costs for negligible improvements in children's product safety."

This extension will end in a matter of months, which leaves Karen—and many like her—in an unenviable position. "I will have to retest all of my products, creating a pointless redundancy at a cost I can't afford. One shoe will cost about \$800-\$1,000 to test, driving me under," she says. Alternatively, she would have to redo her designs so that she uses only exempted materials, but that, she points out, "stifles the creative process and detracts from the overall design of my products".

Ms Natividad's response to third-party testing requirements has been to use only exempt materials. "I no longer sell booties with closures of any kind, except laces, which are textile," she says. Booties with buttons, snaps and zippers were never a large part of her sales, but Ms Natividad laments the fact that she can't make even a single pair with such fixtures now. "I'd have to find a reliable source for CPSIA-compliant buttons, from where I could consistently order small quantities or buy a whole load at one time and hope I eventually sold enough to make it worth my investment in buttons."

### An overlooked micro-majority

At the heart of CPSIA's failings, says Ms Natividad, is a widespread dearth of understanding about how micro-businesses like hers function. "I don't think anyone in the greater Washington DC area really understands the



*Sarah Natividad's microbusiness, Curious Workmanship, makes and sells booties designed to look like shoes. Ms Natividad now uses a limited range of materials in her creations (like the Mary Janes pictured here) in order to stay CPSIA compliant.*

CREDIT: COURTESY OF SARAH NATIVIDAD

role of micro-businesses in the economy, or how much they've expanded in the last ten years thanks to the internet," she says. "From the lobbyists to the consumer groups to the hallowed halls of Congress, everyone thinks that Hasbro and Mattel are the children's product industry because they figure anybody with a stake in things has a lobbyist. Well, they don't. It's an 80-20 thing: 20 per cent of the interests hire 80 per cent of the lobbyists."

Making CPSIA more efficient and effectual, she feels, requires greater clarity and simplicity. "If Congress and CPSC really truly want to make kids safer," she says, "they'll make simple rules that are easy to comply with, disseminate the information about these rules broadly, and punish rule breakers according to their *mens rea*."

As CPSIA stands, she feels, the opposite is true; the rules are complicated, punishments seem arbitrary and out of line with the scope of the problem, and clear information is elusive. "Do they think a small business ombudsman is going to be able to serve every crafter in the country?" she asks.

For Karen, the guidance is just clear enough for her to know that her options are muddy. "What choices do I have?" she asks. "Go out of business once the testing becomes my sole responsibility? Revamp all designs so I am using only exempted materials? Or, because I am so small, continue on as normal, dependent on the testing from my suppliers and hope that I am small enough to fly under the radar? None of these alternatives are any that I want to take."

Perhaps CPSIA's evolution—the amendments, the exemptions, the clarifications—will continue, ultimately resulting in a more satisfying alternative. 