

Consumer Product Safety Alert

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CPSC Approves \$3.9 Million Penalty and Imposition of Compliance Program for National Retail Chain

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A unanimous U.S. Consumer Product Safety Commission ("CPSC") [announced](#) that Ross Stores Inc. ("Ross"), a national discount retailer, agreed to pay a \$3.9 million civil penalty to settle allegations that it failed to report its continued sale of banned children's upper outerwear containing drawstrings. In addition to paying a \$3.9 million fine, Ross agreed to maintain a comprehensive compliance program designed to ensure Ross's compliance with safety standards for these products. The program also aims to ensure that Ross will follow the CPSC's product incident reporting requirements in the future. This announcement comes on the heels of two similarly structured civil penalties levied against Kolcraft and Williams-Sonoma.

Background

On July 19, 2011, the CPSC formally designated the hazards presented by drawstrings in children's upper outerwear as a "substantial product hazard" through a Commission [rulemaking](#). The products are considered to pose a strangulation hazard to young children. Prior to the CPSC's adoption of this regulation, the agency relied upon a voluntary ASTM standard and agency guidance informing stakeholders that the CPSC deemed these products to be defective under the Federal Hazardous Substances Act.

In 2009, Ross paid a civil penalty to settle allegations set forth by the CPSC that it failed to report children's upper outerwear products that it sold between 2006 and 2008. According to the CPSC, Ross continued to sell various styles of children's upper outerwear products with banned drawstrings between January 2009 and February 2012. Ross did not timely inform the Commission, allegedly, that it sold these banned products as is required by Section 15(b) of the Consumer Product Safety Act.

What makes this civil penalty noteworthy?

This latest civil penalty agreement imposing a large fine and internal compliance program mirrors two other recent CPSC civil penalty agreements with [Kolcraft](#) and [Williams-Sonoma](#). However, the Ross civil penalty is different from the others in two important ways:

- *Ross is a retailer.* Ross's response to CPSC's allegations was that it did not manufacture the non-compliant products and relied upon its vendor to ensure compliance. In response, Chairman Inez Tenenbaum [stated](#), "the fact that Ross did not design, manufacture, or import the garments did not relieve it of the obligation to ensure that they comply with all applicable safety statutes and regulations." The agency has made clear through this and other enforcement actions that it will use its enhanced authorities to ensure compliance among not only manufacturers and importers, but also retailers.
- *There was unanimous support for the imposition of a targeted compliance program.* All three Commissioners supported a compliance program aimed specifically at drawstrings and reporting requirements for Ross. The Kolcraft and Williams-Sonoma civil penalty agreements

required those companies to maintain compliance programs that assure compliance with *all* applicable CPSC rules — something Commissioner Nancy Nord [stated](#) she believed was inappropriate because the scope of the compliance programs addressed actions beyond those that were the subject of the penalty.

In addition, this civil penalty also follows another notable enforcement case where the CPSC sought criminal penalties directly against the President of a consumer product importer and retailer. CPSC recently [announced](#) that Hung Lam, the President of LM Import-Export Inc., was sentenced to 22 months in prison and fined \$10,000 after pleading guilty to conspiracy to smuggle banned children's products that contained lead and small parts. Prior to the imposition of criminal penalties, Mr. Lam agreed to a [civil penalty](#) and [permanent injunction](#) that imposed an even more stringent compliance program than the one placed on Ross, including the hire of an independent product safety coordinator.

What does the Ross compliance program require?

In addition to assuring compliance with the drawstrings regulation, Ross's compliance program must contain, among other components:

- Written standards and policies, including one on record keeping;
- A mechanism for confidential employee reporting of compliance related concerns;
- Training programs regarding company compliance-related policies and procedures regarding the drawstrings regulation and reporting protocols; and
- Management oversight of compliance personnel.

What does this mean for companies regulated by CPSC?

This latest enforcement action underscores the point that all retailers, manufacturers, and importers should assess current product testing and CPSC reporting practices and remain vigilant concerning their independent product safety compliance and reporting obligations. The safety of consumer products is receiving more scrutiny from federal and state governments and the CPSC is assessing higher penalties throughout the distribution chain for violations of underlying regulatory and reporting requirements.

Mintz Levin has assembled a [consumer products team](#) that is devoted to CPSC-administered laws and regulations. We regularly advise and assist clients to anticipate and respond to compliance issues arising under the CPSIA and federal product safety law. We are presently advising trade associations, manufacturers, retailers, private labelers and importers on evolving federal and state product safety regulations to not only prevent problems from arising but also on how to capitalize on new opportunities. Additionally, our [White Collar Criminal Defense & Parallel Proceedings Practice](#) has represented a spectrum of high-profile clients, including Fortune 500 corporations, CEOs, company presidents, corporate officers and directors.

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