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Product Safety: A Legal Perspective

Submitted by: Lasko Products



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PRODUCT SAFETY: A LEGAL PERSPECTIVE

Presented by Bradford M. Brush, Esq.
General Counsel
Lasko Products, Inc.

U.S. Legal System and Product Liability

- Product safety is important for obvious reasons, but overlaps significantly with legal liability and other legal issues.
- U.S. law imposes liability on manufacturers if personal injury or property damage occurs as a result of “defective” products.

■ Product “defects” fall in to three main categories:

- Defective design
- Manufacturing defect
- Failure to warn or inadequate warnings.

■ “Defect” may be established if:

- Product does not to comply with voluntary or mandatory government standards.
- Product is not manufactured to manufacturer’s own specifications.
- Human error occurs in manufacturing process, material deviations, component defect, etc.
- It can be shown that an alternate safer design was available and feasible.
- Failure to adequately warn of danger inherent in the use of the product.

- Important to understand that compliance with voluntary safety standards does not mean that manufacturer gets a “pass” if there is an injury or harm resulting from an alleged defect in the product.
- Voluntary safety standards are often considered “minimum” requirements.
- Non-compliance can often mean product does not meet *minimum* safety requirements and may therefore be “defective”.

- There is a significant legal and financial incentive to design and manufacture safe products.

- Litigation costs and claims can be very expensive.

- Product recalls can tarnish brand and result in negative publicity.

OTHER ISSUES

- Products that fail to meet voluntary or mandatory standards, or that are otherwise “unsafe” present other legal issues:
 - Reporting to government agencies (e.g. CPSC);
 - Reporting to certification bodies (e.g. UL) and possible loss of certification;
 - Notifying retailers;
 - Stopping production;
 - Recalling products.

Consumer Products Safety Commission

- The primary government agency consumer products manufacturers report to is the U.S. Consumer Products Safety Commission (CPSC).
- “Charged with protecting the public from unreasonable risks of injury or death from thousands of types of consumer products...”

CPSC Functions

- Enforcement of CPSA which requires, among other things, manufacturers to report defective, dangerous or noncompliant products.
- Establishes mandatory product safety standards, sometimes in addition to existing voluntary standards.
- Monitors and investigates reports of incidents involving harm or injury caused by consumer products.
- Can initiate recalls of potentially dangerous products.

CPSC Standards

- CPSC has passed more than 200 consumer products safety standards, for example:

- Bicycle Helmets
- Carpets
- Cribs
- Lawn Mowers
- Sleepwear
- Mattresses
- Toys
- Window Shades

A Manufacturer Must Report a “Hazard” to the CPSC When:

- Product fails to comply with an applicable consumer product safety standard or ban issued under the CPSA (law)
- Product fails to comply with a voluntary consumer product safety standard upon which the Commission has relied under Section 9 of the CPSA
- ***Product creates an unreasonable risk of serious injury or death***
- ***Product contains a defect which could create a substantial risk of injury to the public***

Is there a Substantial Product Hazard Requiring a Section 15(b) Report?

Does the Product:

Create an unreasonable risk of serious injury or death?

Contain a defect which could create a substantial risk of injury to the public?

Does a Substantial Product Hazard Exist?

“Substantial product hazard” – “If information does reasonably support the conclusion that a defect exists, the firm must then consider whether a defect **could** create a substantial product hazard.” 16 C.F.R. §1115.4, (emphasis supplied).

Data That Companies Must Analyze

1. Complaints/incidents reported by consumers;
2. Information received from the Commission (including new database);
3. Information received from retailers and distributors;
4. Engineering, quality control and production data;
5. Product liability suits and/or claims for personal injury or damage;
6. Information from an independent testing laboratory.

Does the Defect Present a Substantial Product Hazard?

■ *Pattern of defect.*

- How many?
- Manifestation (what type of failure?)

■ *Number of defective products distributed in commerce*

■ *Severity of the risk.*

- Likelihood of injury
- Severity of potential injury
- Population exposed
- Number of injuries reported

Who?

■ Who must report?

- “Manufacturers”
- “Retailers”
- “Importers”

When?

- “Immediately”
- Maximum 16 business days
 - “Immediately, that is within 24 hours” 16 C.F.R.1115.14(e)
 - 5 days for information to reach person responsible to report 16 C.F.R 1115.14(b)
 - Time for “reasonable investigation” not to exceed 10 days 16 C.F.R. 1115.14(d)
 - Weekends and Holidays excluded from computation 16 C.F.R.1115.14(a)

Why?

- IT'S THE LAW

- Penalties for late reporting or failure to report:

- \$100,000 per product in the marketplace
- Up to maximum \$15,000,000

Corrective Action

- Corrective Action=Recall
- Remedies acceptable
 - Refund
 - Replacement
 - In home modification kits
 - In home professional repairs
 - Repair center modifications

THANK YOU

Bradford M. Brush, Esq.

General Counsel

Lasko Products

820 Lincoln Avenue

West Chester, PA 19380-4648

bbrush@laskoproducts.com