

Selling Hoverboards This Holiday Season? Tips To Stay Off The CPSC's Naughty List

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Hoverboards have skyrocketed as a top gift this holiday season, dominating retail shelves and website banners. Many manufacturers make the products, at a range of price points. If your company is selling these Segway-esque self-balancing boards, think closely about potential safety issues. The Consumer Product Safety Commission ("CPSC") reportedly has initiated an investigation into claims that the products, typically powered by a lithium battery, have caught on fire. Although the CPSC does not enforce a mandatory standard governing the products, companies that do not adhere to the CPSC's general guidance for compliance programs and requirements for reporting potential safety issues could quickly appear on the agency's naughty list. Here are some tips to avoid getting coal in your company's stocking:

- **Conduct due diligence.** Ensure that the company making the product has incorporated safety considerations into the design and manufacturing of the product.
- **Obtain contractual representations from the manufacturer or distributor.** Although written assurances do not negate a retailer's obligations with the CPSC, requiring them often can help identify gaps in the vendor's compliance efforts that can be filled before problems develop.
- **Train employees.** The company should have written product safety compliance policies and train employees at all levels on how to comply with them.
- **Monitor and respond to consumer reports.** If your company does not participate in the manufacturing or distribution of the product, the first indicator of a safety issue may come from your customers. Companies should track the range of sources, including warranty claims, complaints, comments to customer service, phone calls, emails, saferproducts.gov, and posts to social media. If something goes wrong with a product, consumers often turn to social media to share their story, especially if they think the problem relates to safety or if they have not received a response from the company.
- **Communicate with the CPSC.** Section 15(b) of the Consumer Product Safety Act requires companies that manufacture, import, distribute, or sell a consumer product that could present a "substantial product hazard" or "unreasonable risk of serious injury or death" to report the potential issue to the CPSC. This can be a low threshold, and the CPSC regularly advises companies, "When in doubt, report." If the CPSC staff is already investigating reports of fire associated with hoverboards, they will certainly take significant interest in other similar reports and in unrelated reports (such as failures in the braking functionality) involving the product.

Any company selling hoverboards should follow the above tips and keep in mind that the CPSC can impose civil penalties against companies that fail to report potential safety issues in a timely manner. Like the sales of hoverboards, civil penalty amounts continue to rise. Happy Holidays.