

Third Largest Toy-Related Fine Issued By CPSC: Spin Master Agrees To Pay \$1.3 Million Civil Penalty

October 28, 2011

Yesterday the U.S. Consumer Product Safety Commission ("CPSC") announced that Spin Master, Inc., agreed to pay a civil penalty of \$1.3 million for selling and failing to report that Aqua Dots, a product Spin Master distributed, contained a substance that metabolizes into the "date rape drug" when ingested. Aqua Dots was a craft kit that consisted of multi-colored beads that stuck together when sprayed with water, allowing children to create various shapes and designs.

Spin Master allegedly received reports in mid-October 2007 of children becoming ill, receiving emergency medical attention, and falling into comas after swallowing Aqua Dots and that Aqua Dots contained 1,4-butylene glycol ("TMG"), which, upon ingestion, metabolizes into gamma hydroxybutyrate ("GHB"), also known as the "date rape drug." The CPSC also alleges that the company received reports of children becoming ill after ingesting a similar product made by the same overseas factory using the same ingredients list. The company did not file a Section 15(b) Report with the CPSC at that time. After receiving two reports of children ingesting the product and becoming ill, on November 5, 2007, the CPSC notified Spin Master, and two days later the parties announced a voluntary recall of 4.2 million units.

The CPSC claims that Spin Master violated the Consumer Product Safety Act by failing to report in a timely manner and the Federal Hazardous Substances Act by importing and selling a banned hazardous substance. In an unusually detailed response to the Commission's allegations, Spin Master denies all allegations that they knowingly violated the law. For example, Spin Master states that the product underwent all legally-required testing and that the company engaged an outside testing company to evaluate the toxicity of the product. A board-certified toxicologist conducted a Toxicological Risk Assessment stating that none of the ingredients was banned or restricted for use.

The recall has also triggered product liability lawsuits against Spin Master, including some class action litigation. In August, however, the Seventh Circuit affirmed the lower court's denial of class certification in one of the cases.

Companies should take note that the CPSC continues aggressive enforcement its civil penalty authority. Even if a company does not participate in the design or manufacture of a product, it must ensure that the product meets applicable safety standards *and* is safe for use by the intended audience during reasonably foreseeable use and misuse. In addition, when evaluating whether a product presents a substantial product hazard or unreasonable risk of serious injury or death reportable to the CPSC, a company should consider potential product liability exposure.