LEADERSHIP: Pathway to the Future

See Inside
Buerkle... Approach To Regulation
Pittle... Product Safety A Family Matter
Robotic Age and Product Safety
Developing Product Safety's Next Generation
THE BIG SAFETY STANDARD IN THE SKY

David Schmeltzer

Two score and five years ago our fathers brought forth to this nation a new Agency dedicated to the proposition that the public should be protected against unreasonable risks of injury associated with consumer products.

When the Agency got up and running in 1973 I was working at the National Highway Traffic Safety Administration, as Assistant Chief Counsel for Enforcement. When I read a copy of the Consumer Product Safety Act I applied for a position there, and was hired first as Assistant General Counsel then Deputy General Counsel 5 years later I became Director of Compliance. During my 25 years working for the Agency it was a pleasure being surrounded by dedicated and hardworking staff; particularly, members of the Office of Compliance that immeasurably helped further the Commission’s goal of protecting the public against unreasonable risks of injuries associated with consumer products.

It became obvious early on that a very important tool given to this new Agency was Section 15(b) of the Act. The clear thinking of the Congress was who better knows about potential risks to the consumer than manufacturers, distributors, importers and retailers of their own consumer products.

"It became obvious early on that a very important tool given to this new Agency was Section 15(b) of the Act. The clear thinking of the Congress was who better knows about potential risks to the consumer than manufacturers, distributors, importers and retailers of their own consumer products."

Congress certainly recognized the importance of Section 15(b) and how it enabled the Agency to carry out its mission because in 2008 it passed the Consumer Product Safety Improvement Act that increased civil penalties for violations of the Act from $1.5 to $15 million, with a provision that the Commission may revise the civil penalty amount every five years. Therefore, the current maximum civil penalty amount as of January 1, 2017 is $16,025,000. In addition to a civil penalty for failure to report, the Improvement Act provides for a civil penalty for selling products that have been recalled.

The present Commission members appear to have disagreements as to what the amount of a civil penalty should be for violations of the Act, but it is clear that the Commissioners and the Chairman agree that civil penalties should be assessed full violations.

"The present Commission members appear to have disagreements as to what the amount of a civil penalty should be for violations of the Act, but it is clear that the Commissioners and the Chairman agree that civil penalties should be assessed full violations."

With regard to the selling of recalled products, on August 30, 2017, the Commission announced that Home Depot agreed to pay $5.7 million civil penalty for selling and distributing recalled products. In addition to paying the $5.7 million civil penalty, Home Depot must maintain a compliance program to ensure
compliance with the Consumer Product Safety Act (CPSC), including a program for the appropriate disposal of recalled products. Home Depot will be required to maintain a system of internal controls and procedures.

Based on my years of experience, here are my thoughts that the Consumer Product Safety Community should consider:

1. Manufacturers and retailers should examine products recalled by other manufacturers and retailers that may be similar to their own products.

2. Retailers should make every effort to increase the effectiveness of the recall by using their own databases to enable them to directly notify consumers who may have purchased the products they recall.

3. Retailers should pay strict attention to consumer safety related complaints about their products, particularly, the digital means consumers can use to complain about safety related issues, the Agency’s saferproducts.gov website and retailers own computer based customer complaint records.

4. The U.S. regulated community and the Commission itself should pay attention to other countries consumer safety activities and use that information to determine if the safety of products sold in the United States have similar problems.

5. Some product liability lawsuits that raise safety issues may often have merit and when they do, the regulated community should correct present and future production of their products accordingly.

6. Manufacturers and retailers should be aware that, if they fail to report to the Commission as required under Section 15(b), or don't report in a timely fashion, or don't sufficiently describe the hazard in the recall notices, it may very well influence the jury in a product liability lawsuit, affecting the result of the case and may even result in punitive damages.

7. While regulated product associations like the Toy Industry Association, Juvenile Product Manufacturing Association, etc. work cooperatively with voluntary standard associations like ASTM, they should work even harder towards the goal of issuing voluntary standards for categories of products that are frequently recalled.

8. If safety related voluntary standards are not adequately complied with, the Agency should issue mandatory standards.

9. Manufacturers or retailers are well advised to have recall procedures in place, so that if a recall does occur it can be effectuated promptly and efficiently.

10. Manufacturers and retailers should take advantage of newly developing technology to help make consumers aware of safety related recalls so that greater recall effectiveness can be achieved and safety instructions can be read not only in manuals but via these new technologies.

Hopefully, future Chairmen and Commissioners, be they Republicans and Democrats, will continue to recognize the importance of the Big Safety Standard in the Sky and how important it is in protecting the public, particularly our vulnerable population, against unreasonable risks of injuries from consumer products.

David Schmeltzer is an Attorney who served at the U.S. Consumer Product Safety Commission from 1973 until 1997 under seven different Chairman. He is a founding member and presently a Board Member of the International Consumer Product Health and Safety Organization (ICPHSO).

Website: www.davidschmeltzer.com

IMPROVING RECALL EFFECTIVENESS

Chris Harvey

Recall activity has increased across industries in recent years, reaching an average 9.4 recalls a day. It's no surprise that consumers are experiencing recall fatigue. In fact, because response rates at the consumer level are so low, global regulatory agencies, including the Consumer Product Safety Commission (CPSC), are considering new steps to increase awareness of new recalls - especially those that carry a high risk of illness or injury.

The consequences of ineffective recalls are serious for the public and businesses alike. Property damage and injuries often make headlines, which can harm hard-earned brand reputations.

"In the face of shifting global regulations and rising recall rates, companies must intensify their efforts in the event of a recall. Some factors, such as cost and frequency of use, can't be controlled. But there are ways to make each recall as effective as possible."