



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

**STATEMENT OF COMMISSIONERS PETER A. FELDMAN AND DOUGLAS DZIAK
ON THE RETRACTION OF INFANT SLEEP PRODUCTS STATEMENTS**

AUGUST 30, 2024

Dreamland Baby Company (Dreamland Baby) has requested a retraction of statements on the Commission’s website and by an individual commissioner related to weighted infant sleep products. The company has alleged that the statements violate Section 6(b) of the Consumer Product Safety Act. Section 6(b) is not a gag order, but rather provides due process for the timely disclosure of safety information to ensure it is “accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act.”

Among other things, the process in this matter was inadequate to develop the necessary factual record. Dreamland Baby sent one letter, and Commission staff proposed a response, but without an opportunity for parties to rebut assertions and for commissioners to ask questions, weigh evidence, or deliberate as a body.

The relief sought by Dreamland Baby in this matter raises separate concerns, particularly with respect to the remedy, which requires a retraction “in a manner equivalent” to the original method of dissemination. If the Commission found a commissioner violated Section 6(b), it could compel retractions on that commissioner’s letterhead and social media accounts. We do not take such relief lightly. Without a fully developed evidentiary record, we are concerned about the precedent such a finding could create. We have seen other independent agencies attempt censorship of the minority views of its commissioners and are aware of how these efforts contribute to concerns about the honesty and integrity of the senior leadership at those agencies.¹

Dreamland Baby is not without additional recourse. In our view, the publication of the statements constitutes final agency action.² Given the procedural deficiencies in this matter, we believe that the relief sought is best obtained through an Article III court.

Accordingly, we abstain.

¹ See Christine Wilson, *Why I’m Resigning as an FTC Commissioner*, WALL ST. J., Feb. 14, 2023, <https://www.wsj.com/articles/why-im-resigning-from-the-ftc-commissioner-ftc-lina-khan-regulation-rule-violation-antitrust-339f115d>.

² See *Co. Doe v. Tenenbaum*, 127 F. Supp. 3d 426, 465 (D. Md. 2012) (holding that CPSC’s publication of a report constitutes final agency action), *rev’d on other grounds sub nom. Co. Doe v. Pub. Citizen*, 749 F.3d 246 (4th Cir. 2014).