



Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chair Alexander D. Hoehn-Saric
 Commissioner Peter A. Feldman
 Commissioner Richard Trumka Jr.
 Commissioner Mary T. Boyle
 Commissioner Douglas Dziak

ITEM:

Request by Dreamland Baby Co. for Retraction of Information Pursuant to Section 6(b)(7) of the Consumer Product Safety Act (Part 1)

(Ballot vote package dated August 21, 2024, OS No. 0318)

DECISION:

The Commission voted (3-0-2) to take other action as follows: Deny retraction of the CPSC statement and approve attached letter (to Dreamland Baby Co.). Chair Hoehn-Saric, Commissioner Trumka and Commissioner Boyle voted to take other action and approve the attached letter.

Commissioner Feldman and Commissioner Dziak abstained from the vote and issued a joint statement regarding this matter.

For the Commission:

Alberta Mills

Alberta E. Mills
Secretary

*Ballot vote due August 29, 2024
(Chair Hoehn-Saric extended the vote due date from August 27 to August 29, 2024.)

Attachments: 1. Take Other Action/Letter to Dreamland Baby Co.
2. Joint Statement by Commissioners Feldman and Dziak

Chair Hoehn-Saric voted on August 29, 2024

Commissioner Feldman abstained from voting on August 29, 2024

Commissioner Trumka voted on August 29, 2024

Commissioner Boyle voted on August 29, 2024

Commissioner Dziak abstained from voting on August 29, 2024



ATTACHMENT: LETTER TO DREAMLAND BABY CO

DATE

Kara McKenna Rollins, Esq.
Jenin Younes, Esq.
Litigation Counsel
New Civil Liberties Alliance
1225 19th Street NW, Suite 450
Washington, D.C. 20036

Dear Ms. Rollins and Ms. Younes:

On July 23, 2024, you filed a written request with CPSC's Secretary on behalf of Dreamland Baby Co. (Dreamland) for retraction of information pursuant to Section 6(b)(7) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2055(b)(7), and Commission regulations at 16 C.F.R. 1101.52. You advised that Dreamland develops, designs, produces, and sells infant and toddler products, including weighted sleep sacks, swaddles, and blankets. Dreamland seeks retraction of CPSC online guidance (CPSC Statement) not to use weighted blankets or weighted swaddles. Dreamland also seeks retraction of statements, social media posts, and communications posted by Commissioner Trumka on weighted sleep products, which the Commission is addressing in another written response to you. The Commission has reviewed your request and, for the reasons discussed below, finds that a retraction is not warranted.

Section 6(b)(7) of the CPSA provides that, if the Commission finds that in the administration of the CPSA, it has publicly disclosed inaccurate or misleading information that reflects adversely upon the safety of any consumer product or class of consumer products, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner equivalent to that in which such disclosure was made, take reasonable steps to publish a retraction of such inaccurate or misleading information. 15 U.S.C. § 2055(b)(7). Commission regulations set forth procedures for such retractions at 16 C.F.R. 1101.52(c).

Further, under section 6(b)(6), when a public disclosure reflects on the safety of a class of products, the Commission shall establish procedures designed to ensure that such information is accurate and not misleading. 15 U.S.C. § 2055(b)(6). The CPSA also provides that the procedural requirements of section 6(b)(1) requiring advance notice and comment to a manufacturer or private labeler only apply when the manner in which a consumer product is described will permit the public to "ascertain readily" the identity of the manufacturer or private labeler. See 15 U.S.C. § 2055(b)(1); 15 C.F.R. § 1101.13 (section 6(b)(1) applies "only when a reasonable person receiving the information in the form in which it is to be disclosed and lacking specialized expertise can readily ascertain from the information itself the identity of the manufacturer or private labeler of a particular product.").



Dreamland requests retraction of a portion of the statement on CPSC's Safe Sleep page titled "Safe Sleep – Cribs and Infant Products" found at "https://www.cpsc.gov/SafeSleep." Under the subheading "Remember CPSC's dos and don'ts for baby sleep spaces" is the following guidance "Follow these simple tips to make every sleep a safe sleep":

DON'T:

- **Don't** add pillows or blankets to your baby's sleep space.
- **Don't** use weighted blankets or weighted swaddles.*
- **Don't** allow your baby to sleep in an inclined product with an angle greater than 10° such as a rocker, bouncer or glider.
- **Don't** leave your baby unsupervised in products that aren't designed for safe sleeping, such as any inclined product.

Inclined products, such as rockers, gliders, soothers and swings, should never be used for infant sleep.

*NIH.gov and CDC.gov

The NIH.gov and CDC.gov hyperlinks¹ direct users to pages on these agencies' official sites providing guidance from the "Safe to Sleep" program. Dreamland acknowledges that the CPSC Statement, and the NIH and CDC information to which it links, refers to a class of products and does not reference Dreamland, but argues that the Commission is nevertheless barred from providing such information to the public because the Commission did not corroborate the information and because "neither CDC nor NIH based their statements on any data or evidence specific to weighted swaddles or blankets but relied only on a perceived lack of safety data." July 23 letter at 7-8.

After considering Dreamland's request, the Commission has determined that the CPSC Statement is not barred by section 6(b)(7) of the CPSA. Section 6(b)(7) allows the CPSC to reference complementary information on other federal websites as long as such information is accurate and not misleading. In adding the CPSC Statement to the CPSC website, Commission staff cleared it for public disclosure pursuant to its internal agency clearance process, found in Directive 1450.2.² Commission regulations make clear that that this process is designed to comply with the mandate in CPSA section 6(b)(6) to establish "procedures designed to ensure that... information is accurate and not misleading."³

Further, the Commission disagrees with Dreamland's assertion to that the references to the NIH and CDC guidance are *per se* inaccurate or misleading unless CPSC independently corroborates them. Instead, consideration of and crosslinking to other agencies' guidance is consistent with the CPSC's

¹ [Safe Sleep Environment | Safe to Sleep® \(nih.gov\)](#) (last visited August 21, 2024); [Helping Babies Sleep Safely | Reproductive Health | CDC](#) (last visited August 21, 2024).

² A copy of the Directive is attached.

³ See 16 C.F.R. 1101.2(c) (referring to the internal clearance procedures in Directive System 1450.2).



Linking Out Policy, which explains that CPSC can “crosslink to content on federal and state government websites and Social Media Sites, provided that the content complements safety information issued by the agency and is related to the agency’s mission.”⁴ To provide further context for the crosslinks to content from NIH and CDC in the CPSC Statement, the Commission has made a slight modification to the references in the asterisk.

Finally, the Commission notes that the guidance under question is provided by NIH and CDC as part of the Safe to Sleep® campaign, a collaboration between federal health agencies, the American Academy of Pediatrics, and other outside organizations, that has been in place for more than 30 years. According to an NIH timeline of the campaign, the campaign’s safe sleep guidance has reflected the recommendations of the AAP Task Force on SIDS since 2000.⁵ This reliance on AAP is made clear on the NIH website describing the Safe to Sleep® collaborators and partners.⁶

Therefore, the Commission has determined that retraction of the CPSC statement is not warranted.

Sincerely,

Alberta E. Mills
Secretary

⁴ See Appendix B of CPSC Directive 1450.2.

⁵ See “Campaign History – Safe to Sleep” at <https://safetosleep.nichd.nih.gov/campaign/history>.

⁶ See “Collaborators and Partners” at <https://safetosleep.nichd.nih.gov/campaign/partners>.



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).