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Jail Time as a Result of Joint CPSC-Customs Enforcement

by W. Jeffery Edwards, Kelly L. Faglioni and Meghann C. T. Supino, Hunton & Williams LLP

At the end of May, the U.S. District Court for the Southern District of Florida sentenced a Florida import company president to 22 months in federal prison for violating consumer product safety and other laws. His wife, an executive of a related company, was sentenced to a year of probation. The case is significant because it involves a criminal prosecution of importers of unsafe children's products. It also highlights the enforcement partnering between the Consumer Product Safety Commission and Customs and Border Protection.

Defendants Hung Lam and wife, Isabella Kit Yeung, allegedly owned and operated three Florida businesses, LM Import-Export Inc., LK Toys Corporation and Lam's Investments Corp. (LIC), which they used to import and sell children's and other consumer products. Between October 1997 and February 2011, CBP allegedly seized 35 of LM's shipments from Hong Kong for violations of the Federal Hazardous Substances Act and Consumer Product Safety Act. The majority of the products confiscated from LM allegedly violated the lead ban and small parts regulations enforced by the CPSC.

According to court documents, the CPSC sent 25 letters of noncompliance advising LM of the hazards discovered during CPSC lab testing. Those notices instructed LM to cease sale and distribution of those products and to ensure that subsequent shipments complied with all consumer product safety rules. LM continued to import, ship and offer the offending products for sale online and in discount stores. An investigation further revealed that LM also imported allegedly counterfeit products, such as toys featuring Disney characters. The packages also contained misleading shipping labels and invoices, referring to children's puzzle mats as "door mats," for example, and failing to identify the country of origin as China.

The picture the U.S. Attorney's Office painted was clear: LM and its agents and officers willfully and knowingly violated multiple consumer product safety and copyright laws — despite actual notice of their violations — and actively tried to cover their tracks. The U.S. government filed parallel criminal and civil cases against Lam, Yeung and their companies. The civil complaint sought a permanent injunction to enjoin further violations of consumer product safety rules by the defendants and civil penalties for those violations already committed.¹ The criminal suit contained several counts, including trafficking counterfeit goods, smuggling, entry of goods by false statements and conspiracy. The latter count alleged that the defendants conspired to violate consumer product safety laws and to commit the other enumerated criminal acts.²

Although the defendants initially pled not guilty, the parties entered into two separate consent decrees in the civil action in April 2012 — one for a permanent injunction and one for the

¹ United States of America v. LM Import-Export Inc. et al., S.D. Fl. Case No. 1:11-cv-20765.

² United States of America v. Hung Lam et al., S.D. Fla. Case No. 12-20048-CR.

payment of civil penalties — that required the defendants to plead guilty in the criminal case. The defendants agreed to pay a civil penalty of \$287,500.

To the CPSC, the “result demonstrates how serious” it is “about protecting American consumers from dangerous products and defending our consumer product safety laws.”³ The CPSC likely sees this as evidence of the success of the “robust import enforcement program” and “partnership” with CBP that it has touted in its literature. Over the last few years, the CPSC has “expanded the placement of CPSC experts collocated at some of the largest ports in the country,” and it was able to screen in 2012 “more than 17,000 models of imported consumer products at US ports.”⁴

This case is not representative of the normal enforcement activity the government pursues against CPSC and FHSA offenders. In 2011,⁵ the United States filed only three criminal cases based in part on violations of CPSC-administered laws. Two of those cases involved cigarette lighters and the other involved fireworks. The LM case is therefore remarkable in its pursuit of importers of unsafe children’s products, based primarily on laws that have gone into effect gradually since Congress enacted the Consumer Product Safety Improvement Act in 2008. That legislation aimed to protect children from lead-riddled products, mostly imported from China, but has seen several years of confusion and scrambling to adjust in domestic product markets.

While the case is a reminder of the penalties available to the government for violations of CPSC-administered laws, the fact that defendants ignored repeated warnings likely explains the result. A cornerstone of the agency’s enforcement is its work with businesses that are forthcoming with information about potential violations and proactive in their attempts to recall and remedy the situation. In assessing the amount of a civil penalty, the CPSC considers circumstances such as self-reporting and corrective action.⁶

³ Press release, US Consumer Product Safety Commission, “President of LM Import-Export Sentenced to 22 Months in Federal Prison, Fined \$10,000 for Importing Banned Children’s Products,” posted June 5, 2013, <http://www.cpsc.gov/en/Newsroom/News-Releases/>. See also press release, US Attorney’s Office Southern District of Florida, “Florida Corporations and Their Management Sentenced for Trafficking Toys Containing Lead and Smuggling Counterfeit Disney, Marvel and Major League Baseball Merchandise from China,” May 31, 2013, <http://www.justice.gov/usao/fls/PressReleases/130531-01.html>.

⁴ US Consumer Product Safety Commission, “CPSC Accomplishments from 2009–2012,” posted April 16, 2013, <http://www.cpsc.gov/en/About-CPSC/Agency-Reports/CPSC-Accomplishments-from-2009-2012/>.

⁵ 2011 is the last fiscal year for which the CPSC has posted data.

⁶ The CPSC is required to “consider the nature, circumstances, extent, and gravity of the violation, including the nature of the substance, the severity of the risk of injury, the occurrence or absence of injury, the amount of the substance distributed, the appropriateness of such penalty in relation to the size of the business of the person charged, ... and such other factors as appropriate.” 15 U.S.C. § 2063(c)(3).

The proof is in the numbers. In 2011, the CPSC collected civil penalties from only 13 companies through settlement agreements and pursued four civil actions in federal court. Last year, in 2012, the CPSC filed four recall lawsuits. In contrast, 412 voluntary recalls occurred in 2011 in cooperation with the CPSC. In May 2013 alone, the CPSC website published notices of 20 recalls. And those numbers do not account for the multitude of reports that businesses file to report a potential safety concern that the CPSC determines does not require a formal recall.

So, while businesses may dread the potential fallout from a recall, the reality is that reporting and recall are relatively commonplace, and proactive action on the part of the company most likely will forestall the kind of civil and criminal enforcement action that resulted, in an extreme example, in jail time for defendant Hung Lam. To those who might prefer to dust the potential violations under the proverbial rug, however, beware: Lam may be saving you a seat in the prison cafeteria.

Jeffery Edwards and Kelly Faglioni are partners and Meghann Supino is an associate with Hunton & Williams in Richmond, Va.

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