

2007

CPCS Rendered Virtually Powerless

Jeremy LaMarche

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>



Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Jeremy LaMarche *CPCS Rendered Virtually Powerless*, 19 Loy. Consumer L. Rev. 308 (2007).

Available at: <http://lawcommons.luc.edu/lclr/vol19/iss3/6>

This Consumer News is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

CONSUMER NEWS

Jeremy LaMarche*

CPCS Rendered Virtually Powerless

The resignation of chairman Hal Stratton from the Consumer Product Safety Commission (CPSC) has left the CPSC virtually powerless to impose civil penalties or to regulate the activities of companies with respect to consumer products.¹ The CPSC is a federal commission that consists of three commissioners.² However, the chairman of the CPSC, Hal Stratton, resigned from his position on the commission.³ The Consumer Product Safety Act governs the CPSC and states that the CPSC can continue to operate with two commissioners for six months.⁴ However, after six months, the CPSC can neither impose civil penalties nor regulate consumer products.⁵

President Bush appointed Hal Stratton to the CPSC in 2002.⁶ Stratton was the co-chair of New Mexico's Lawyers for Bush during the 2000 presidential campaign.⁷ Stratton was previously the Attorney General of New Mexico but had no previous experience in con-

* J.D. candidate, May 2007, Loyola University Chicago School of Law; B.A., Political Science and History, University of Wisconsin-Madison.

¹ Enoch, Joseph. *Consumer Safety Agency In Limbo*, Consumer Aff. (Feb. 6, 2007) www.consumeraffairs.com/news04/2007/02/cpsc_adrift.html.

² Enoch, *Consumer Safety Agency in Limbo*, *supra* note 2.

³ Hood, James. *Consumer Safety Chief Quits Abruptly*, Consumer Aff. (July 19, 2006) www.consumeraffairs.com/news04/2006/07/cpsc_stratton.html.

⁴ Enoch, *supra* note 2.

⁵ *Id.*

⁶ Lazarus, David. *Vacancy Stymies Safety Panel*, San Francisco Chron. (Feb. 14, 2007) www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/02/14/BUGU9O44C21.DTL&feed=rss.dlazarus.

⁷ Lazarus, *supra* note 7.

sumer advocacy.⁸ Stratton resigned from his CPSC position on July 15th, 2006 in order to join a Washington, D.C. law firm.⁹ Stratton's departure left the CPSC with two commissioners, Nancy Nord and Thomas Moore.¹⁰

On January 15, 2007, six months after Stratton's departure, the CPSC was left powerless to impose civil penalties or to regulate consumer products.¹¹ Under the Consumer Product Safety Act, two commissioners can make up a quorum for six months after a vacancy in the Commission occurs.¹² However, after six months, the CPSC can no longer impose civil penalties nor regulate products.¹³ Therefore, the CPSC cannot regulate potentially dangerous products that are currently being marketed.¹⁴ Furthermore, if a manufacturer needs to recall a product because it is potentially dangerous to the public, the manufacturer will not face the threat of any civil penalties while there are only two commissioners.¹⁵

Critics have expressed concern that President Bush is not acting quickly enough to fill the void created in the CPSC when Stratton resigned.¹⁶ These same critics point to the existence of dangerous products currently being sold on the market in need of regulation.¹⁷ For example, in the past two years, there have been more than a dozen lead-related recalls on children's toy jewelry.¹⁸ Often times, children swallow these products which can lead to various health problems including behavioral problems, stunted growth, impaired hearing, mental retardation and sometimes death.¹⁹ In December of

⁸ Hood, *supra* note 4.

⁹ *Id.*

¹⁰ Lazarus, *supra* note 7.

¹¹ Enoch, *supra* note 2.

¹² Skrzycki, Cindy. *Consumer Commission Loses its Bite*, Seattle Post-Intelligencer (Feb. 22, 2007) http://seattlepi.nwsourc.com/opinion/304578_consumerproduct22.html.

¹³ Enoch, *supra* note 2.

¹⁴ Lazarus, *supra* note 7.

¹⁵ *Id.*

¹⁶ Enoch, Joseph. *Children Die of Lead Poisoning: Safety Agency Powerless to Act*, Consumer Aff. (Feb. 7, 2007) http://www.consumeraffairs.com/news/04/2007/02/cpsc_adrift2.html.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

2006, the CPSC approved an advance notice of proposed rulemaking that may lead to a ban on children's jewelry containing more than .06 percent total lead.²⁰ However, the CPSC is prohibited from acting on this proposed rule until a new commissioner is nominated.²¹

Some in Congress are attempting to take action that would remedy the quorum situation.²² Mark Pryor, a Democrat from Arkansas, is chairman of the committee's consumer affairs subcommittee and has introduced legislation that would give the two remaining commissioners another six months of authority.²³ Pryor hopes that such legislation will give the President more time to replace Stratton.²⁴ Lisa Ackerman, spokeswoman for Pryor, said that Pryor hopes that the bill will "light a fire under the administration to get things moving."²⁵

The CPSC's effectiveness will not be restored until it can properly regulate dangerous products effecting consumers. The situation will only be remedied by swift action by the Bush administration and prompt approval by the U.S. Senate. Until then, consumers will continue to be put in danger due to the diminished authority of the CPSC.

²⁰ Huffman, Mark. *Safety Agency Needs to Get the Lead Out*, Consumer Aff. (Feb. 20, 2007) http://www.consumeraffairs.com/news04/2007/02/cpsc_lead.html.

²¹ *Id.*

²² Skrzycki, *supra* note 13.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*