



# Blaneys on Business



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## News Alert - July 8, 2011

### CANADA CONSUMER PRODUCT SAFETY ACT WILL AFFECT IMPORTERS OF CONSUMER PRODUCTS

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#### General

The [Canada Consumer Product Safety Act](#), S.C. 2010, c. 21 (the "Act") came into force on June 20, 2011. It is intended to protect the public by addressing or preventing dangers to human health or safety that are posed by consumer products in Canada, including those that are imported from other countries.

The Act applies to imports of consumer products for personal use as well as for commercial purposes. However, certain provisions (such as the requirement to report incidents and to maintain records) apply only to the manufacturing, importing, advertising or sale of consumer products for commercial purposes. A brief overview of the Act is provided below.

#### Meaning of Consumer Product

According to Section 2 of the Act, the term "consumer product" means a product, including its components, parts or accessories, that may reasonably be expected to be obtained by an individual to be used for non-commercial purposes, including for domestic, recreational and sports purposes, and includes its packaging.

Section 4 of the Act outlines the consumer products to which it does not apply:

- a) The Act does not apply to products listed in [Schedule 1](#) of the Act. Schedule 1 includes products that are covered under other legislation such as food, cosmetics, medical devices, drugs, natural health products, pest control products, fertilizers and vehicles.
- b) The Act does not apply to tobacco products as defined in Section 2 of the [Tobacco Act](#), except with respect to their propensity to ignite.
- c) The Act does not apply to natural health products as defined in Subsection 1(1) of the [Natural Health Products Regulations](#) made under the [Food and Drugs Act](#).

#### Specific Prohibitions

The Act prohibits specific conduct relating to the manufacturing, importing, advertising or sale of certain consumer products. These prohibitions include the following:

- a) No manufacturer or importer may manufacture, import, advertise or sell a consumer product that: (i) is a danger to human health or safety; (ii) is the subject of a recall order or the subject of a voluntary recall in Canada because the product is a danger to human health or safety; or (iii) is the subject of a remedial measure imposed by the Minister of

- Health (the “Minister”) that the manufacturer or importer has failed to carry out. [Section 7]
- b) No person shall advertise or sell a consumer product that they know: (i) is a danger to human health or safety; (ii) is the subject of a recall order or the subject of a voluntary recall in Canada because the product is a danger to human health or safety; or (iii) is the subject of a remedial measure imposed by the Minister that the manufacturer or importer has failed to carry out. [Section 8]
- c) No person shall package or label a consumer product: (i) in a manner – including one that is false, misleading or deceptive – that may reasonably be expected to create an erroneous impression regarding the fact that it is not a danger to human health or safety; or (ii) in a manner that is false, misleading or deceptive regarding its certification related to its safety or its compliance with a safety standard or the regulations. [Section 9]
- d) No person shall advertise or sell a consumer product that they know is advertised, packaged or labelled in a manner prohibited by the Act. [Section 10]
- e) No person shall manufacture, import, advertise or sell a consumer product listed in [Schedule 2](#) of the Act. Schedule 2 contains products that are deemed dangerous to human health and safety; it includes products such as urea formaldehyde-based thermal insulation and polycarbonate baby bottles that contain bisphenol A. [Section 5]
- f) No person shall manufacture, import, advertise or sell a consumer product that does not meet the requirements set out in the regulations. [Section 6]
- g) No person shall knowingly provide the Minister with false or misleading information in relation to a matter under the Act or the regulations. [Section 11]

#### **Requirement to Report Incidents**

According to Section 14 of the Act, a person who manufactures, imports or sells a consumer product for commercial purposes is required to provide information to the Minister and to the product’s supplier (if applicable) concerning consumer product safety incidents or product defects that result, or could reasonably be expected to result, in death or harmful health effects. All available information must be provided within two days after the day on which they become aware of the incident. The manufacturer of the consumer product, or if the manufacturer carries on business outside Canada, the importer, must also provide the Minister with a written report within 10 days after the day on which they become aware of the incident or within the period that the Minister specifies by written notice.

#### **Requirement to Maintain Records**

According to Section 13 of the Act, any person who manufactures, imports, advertises, sells or tests a consumer product for commercial purposes must prepare and maintain certain documents, so that unsafe products can be traced back to their source. A person who imports a consumer product for commercial purposes

must provide the Minister with these required documents no later than at the time of the product's importation.

These documents must be retained for six years after the end of the year to which they relate, or for any other period that may be required by the regulations. However, the Minister may exempt a person from the requirement to keep documents in Canada if he or she considers it unnecessary or impractical for the person to keep them in Canada.

#### **Tests, Studies, and Compilation of Information**

According to Section 12 of the Act, the Minister can order any person who manufactures or imports a consumer product for commercial purposes to conduct tests or studies, compile any necessary information, and provide any necessary documentation considered to verify compliance or prevent non-compliance with the Act or the regulations.

#### **Relevance to the Consumer Products Industry**

The Act represents a significant change for the consumer products industry. Any business that manufactures, imports, advertises, or sells consumer products for commercial purposes may be subject to its provisions. If required, Blaney McMurtry LLP can provide these businesses with advice relating to the Act, its applicable regulations, and its significance to their existing operations. ■

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