

To: Our Clients and Friends

June 29, 2010

California Proposition 65 – Shoes, Purses, What’s Next?

What is CA Prop 65?

California Proposition 65 (“Prop 65”), passed by voters in 1986, has given rise to hundreds of lawsuits against retailers and manufacturers of products that contain “hazardous substances,” including lead, phthalates, cadmium, and acrylamides. The first products targeted were food-related - ceramicware, decorated glassware, and cookware. Food products themselves were targeted next, including wine, balsamic vinegar, chocolate, potato chips and, most recently, coffee products. Fashion accessories have also become a target, including jewelry.

Lead in Leather and Vinyl Products

The latest target of Prop 65 litigation is leather and vinyl. Environmental groups including Mateel Environmental Justice Foundation and the Center for Environmental Health have filed lawsuits against many prominent retailers alleging hazardous levels of lead in leather and vinyl footwear, wallets, purses, coin purses and tote bags. These lawsuits allege that lead is found in a stabilizer used in vinyl or imitation leather products, as a chemical ingredient in some dyes, paints and coloring agents, and in chemicals used in the leather tanning process. The plaintiffs claim that consumers and employees are exposed to lead when they wear, touch or handle the products. Lead allegedly transfers from these products to hands and skin and is ingested through hand to mouth contact and/or dermal absorption.

Settlements

Several of these complaints have already settled with Consent Judgments that contain reformulation standards for these leather and vinyl products, and strict enforcement procedures for failure to reformulate these products. Damages, penalties and attorneys’ fees have been paid in excess of \$35,000 for each type of product sold. The following new reformulation standards have been agreed to for footwear, purses and accessories made of leather or vinyl:

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- **Paints and surface coatings:** No covered product may contain more than 90 parts per million (“ppm”) lead by weight.
- **Vinyl:** No covered product may contain more than 200 ppm lead by weight.
- **Leather:** No covered product may contain more than 600 ppm lead by weight, eventually to be reduced to no more than 300 ppm lead by weight.

What You Can Do to Be Compliant with CA Prop 65

Retailers who do business in California and manufacturers who sell to retailers in California need to review their products to determine if they are the subject of current or prospective Prop 65 claims. In particular, vinyl and leather products should be considered likely targets of Prop 65 litigation. A testing program should be implemented to ensure compliance with existing Prop 65 standards and a testing protocol for covered products should be adopted. All retailers and manufacturers of footwear, purses and other vinyl and leather accessories should take immediate steps to implement testing procedures to determine if their products meet new reformulation standards for lead in products sold in California.

If you have any questions or would like additional information, please do not hesitate to contact Marcy Bergman (415-675-3421; marcy.bergman@bryancave.com).

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