

Congressional Toy Safety Hearings: Where's Wal-Mart?

As Congressional hearings commence to investigate the dangerous Chinese toy recalls, the House and Senate are calling some of the industry's largest players to testify about their roles in the process. Mattel, Toys "R" Us, the Toy Industry Association and others are all testifying at a U.S. Senate hearing on "Toy Safety Standards." But we won't hear from the biggest name of all -- Wal-Mart -- which has used its political power to shift blame to suppliers and avoid taking responsibility for its role in the massive toy recall scandal.

Wal-Mart recently launched its "toy safety net" program, but it is noticeably vague on testing requirements and details. While the public focus is currently on lead paint, many recalls have occurred due to other hazards. In addition, Wal-Mart's primary testing laboratory, Consumer Testing Laboratories, lacks both NRTL and A2LA accreditations, is headquartered in Bentonville, Arkansas, and by all accounts, gets 80-90% of its business from Wal-Mart. Can it really be considered third party "independent testing?"

It is also well-known in the industry that most toys for the holidays are already on the way to Wal-Mart stores or in its warehouses. [Inbound Logistics, November 2006; Honolulu Advertiser, 9/9/07]

Wal-Mart's plan to require manufacturers to re-submit testing certifications for existing toys is unrealistic if such documentation did not exist initially. Will Wal-Mart really refuse to put those products on the shelves without the documents? That seems unlikely.

WAL-MART'S DOMINANT ROLE IN THE TOY INDUSTRY

Wal-Mart has one-third of the U.S. Toy Market

Wal-Mart controls roughly one-third of the U.S. toy market, according to Eric Johnson, a management professor at the Tuck School of Business at Dartmouth College. [*Washington Post*, 8/24/07]

Wal-Mart is the number one seller of toys in the U.S.

“Sean McGowan, a toy industry analyst at Harris Nesbitt, said the selection of Storch was an acknowledgment of the rapid success Target has had as a toy retailer, where it now threatens to edge out Toys "R" Us as the No.2 in the market, behind Wal-Mart. Today, Wal-Mart controls 22 percent of the U.S. toy market, compared with about 17 percent for Toys "R" Us, analysts said.” [*International Herald Tribune*, 2/8/06]

The majority of toys on Wal-Mart's shelves are made in China

About 80 percent of the toys sold in the United States are made in China. Wal-Mart reports that the majority of toys on its shelves are manufactured there but will not give a specific figure. [*Washington Post*, 8/24/07]

Wal-Mart is the largest customer for both Hasbro and Mattel

According to the International Securities Exchange in December 2006, Wal-Mart is the largest customer for both Hasbro and Mattel – providing 21 and 19.6 percent of revenue, respectively. Mattel recently issued its third significant recall in just over a month, of toys made in China. The three recalls include more than 20 million toys worldwide and approximately 11million in the United States alone. [*Guardian Unlimited*, 9/5/07]



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PARTIAL LIST OF RECALLED CHILDREN'S PRODUCTS IN RECENT YEARS

2007:

- Fisher-Price Recalls Bongo Band Toys Due to Violation of Lead Paint Standard
- Fisher-Price Recalls Geo Trax Locomotive Toys Due To Violation of Lead Paint Standard
- Mattel Recalls Various Barbie® Accessory Toys Due to Violation of Lead Paint Standard
- Thomas and Friends, Curious George and Other Spinning Tops and Tin Pails Recalled By Schylling Associates Due To Violation of Lead Paint Standard
- Mattel Recalls Doggie Day Care™ Magnetic Toys Due to Magnets Coming Loose
- Mattel Recalls Barbie and Tanner™ Magnetic Toys Due to Magnets Coming Loose
- Mattel Recalls “Sarge” Die Cast Toy Cars Due To Violation of Lead Safety Standard
- Mattel Recalls Batman™ and One Piece™ Magnetic Action Figure Sets Due To Magnets Coming Loose
- Fisher-Price recalled nearly one million licensed character pre-school toys including Sesame Street, Dora the Explorer and others for containing excessive levels of lead.
- Uncas Manufacturing recalled approximately 220 sets of Sleeping Beauty Crown and Cinderella Star Earring Sets because of high levels of lead (sold only at Florida Wal-Mart stores).
- Illinois Attorney General Lisa Madigan pushed for the voluntary recall of baby bibs which were found to contain high contents of lead in the PVC lining of the bibs. This was done after the Center for Environmental Health informed Madigan of the lead in the baby bibs that were manufactured in China contained high levels of lead. The enforcement threat from Madigan’s Office lead to an agreement that Wal-Mart would recall the bibs and cease stocking bibs containing PVC and lead. [Associated Press, 5/3/07]
- Fisher Price Rainforest Infant Swing was recalled for an entrapment hazard.
- Hasbro Easy Bake Ovens were recalled because young children can insert their hands into the oven’s front opening, and get their hands or fingers caught, posing entrapment and burn hazards.
- Evenflo Embrace Car Seats/Infant Carriers were recalled because of the handle unexpectedly releasing, resulting in the injury of 160 children.
- Graco Contempo Highchairs were recalled because the highchair could collapse and injure children.
- Simplicity recalled cribs due to fall, entrapment and choking hazards.
- RC2 Corporation recalled various wooden Thomas and Friends Toy Trains because of lead contamination.
- Magnetix magnetic building sets were recalled (expansion of a 2006 recall) due to choking safety hazards.
- Infantino recalled children’s toy castles due to a choking hazard from small beads.
- Estes industries had to recall a remote control plane because it posed a fire risk when the battery was recharging.
- Fisher-Price recalled about 500,000 "Laugh and Learn" Learning Bunny Toys because the toy's pink pompom nose can detach, which poses a choking hazard to children.

2006:

- Wal-Mart recalled Minnie Mouse Cardigan Sets (distributed and sold by Wal-Mart) because when buttoned, the cardigan can pose a strangulation hazard.
- Baby Cookie Monster Plush Toys (sold only at Wal-Mart) were recalled due to a small felt fabric cookie attached to the plush toy’s hand. Easily removed, it poses a choking hazard.



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- Suave Kids Bath Set (sold only at Wal-Mart) was recalled because items in the baths sets contain small parts that pose a choking hazard to young children. Additionally, some of the handles on the carrying case are long enough to pose a strangulation hazard.
- Adventure Playsets Wooden Swing Sets were recalled because defective bolts could cause the swing set frame to detach from the fort structure.
- Playskool recalled Team Talkin' Tool Bench because the over-sized, plastic toy nails can become forcefully lodged in children's throats, resulting in suffocation and death.
- LEGO EXPLORE Super Trucks were recalled because plastic wheels on the truck can detach, exposing a metal axle. This posed a puncture hazard to young children.

2005:

- Wal-Mart recalled Kid Connection 10-in-1 Activity Trunks (imported and sold by Wal-Mart) due to choking hazard.
- Baby Connection Fun Frog Soft Gym by Infantino (distributed and sold by Wal-Mart) were recalled because a cap on the wire supports inside the soft gym's upright arms can detach, allowing the wire to poke through the fabric. This posed a laceration and puncture hazard to babies.
- Baby Connection Reef Rocker (distributed and sold by Wal-Mart; made in China) was recalled because a seam on the plastic balls can separate, releasing the small toy inside and posing a choking hazard to young children.
- Disney Princess Bracelet Keyrings were recalled due to high levels of lead.

2004:

- Cosco's "Rock N' Roller" baby stroller was recalled because the seat can partially detach from the frame during use and the infant occupant can be injured in a fall.
- Schwinn-brand Toddler Bicycle Helmets were recalled because they did not comply with impact testing requirements.
- Tek Nek Toys recalled ride on toys because the screw and nut assembly attaching the steering wheel can come loose, posing a choking and aspiration hazard to young children.

2003:

- The Playskool Magic Start Crawl 'n Stand (model sold only by Wal-Mart) was recalled because the item can tip over during use.

2001:

- PLAYGO toy vehicles were recalled because small parts can break off the toy vehicles, posing a choking hazard to young children.

2000:

- Cosco recalled about one million Options 5 High Chairs because the seats can slip or separate from the frame and fall to the ground.
- Playskool Klackeroo toys were recalled because the brightly colored end knobs can detach and allow small, geometric-shaped pieces to come loose. This is choking hazard for infants and young children.
- Graco's Tot Wheels Entertainer Activity Center infant walkers were recalled for repair. These walkers can collapse unexpectedly during use and injure infants.
- Little Smart Soft Songs Baby Phone by Vtech was recalled due to a ball-shaped antenna which can detach, presenting a choking hazard to young children.

1999:

- Cosco recalled about 62,000 mattresses sold with tubular metal cribs because of compression and entrapment dangers.
- Cosco recalled about 57,000 Geoby™ Two Ways™ tandem strollers because the plastic locks on the folding mechanisms can break during use, causing the strollers to suddenly collapse.



1998:

- Fisher-Price recalled up to 10 million battery-powered Power Wheels ride-on cars and trucks. The vehicles' electrical components can overheat and cause fires. Additionally, wiring problems can prevent the vehicles from stopping.

[Source: <http://www.cpsc.gov>] *Not all-inclusive.

WAL-MART'S RESISTANCE TO CPSC REPORTING

The Consumer Product Safety Commission (CPSC) "is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction." Each year, faulty products injure and kill thousands of people. Wal-Mart has a checkered past with the CPSC and a history of not removing recalled items from its shelves. [<http://www.cpsc.gov/about/about.html>]

Under the current system between the CPSC and Wal-Mart, Wal-Mart is allowed to report only when hazards are direct injury from a returned product. The current system does not track hazardous and toxic substances in products that are subject to little or no independent testing, such as children's toys and clothing. In addition, Wal-Mart's reports to the CPSC are based only on products that are returned to its stores, so many injuries and dangers go unreported if the products aren't returned. The lack of testing and weak reporting requirements combined with Wal-Mart's history of failing to remove all recalled products from store shelves long after they have been recalled by the company potentially jeopardizes consumer safety. While some progress has been made in its CPSC reporting, Wal-Mart has not always been a willing participant. [Mullan, "A Working Model for Retail Reporting Under Section 15," US CPSC, 2/23/05]

- **May 2001: Wal-Mart Sued For Failing to Report Defective Exercise Equipment; Wal-Mart Said Suit Without Merit.** In April 2001, the department of Justice on behalf of the Consumer Product Safety Commission (CPSC) sued Wal-Mart saying the retailer knew about, but failed to report, 46 incidents of injury related to home exercise equipment sold in its stores. According to the lawsuit, the injuries included fractured vertebrae, herniated discs, and a compression injury to a woman's spine. Wal-Mart spokesman Bill Wertz said the retailer did not believe the suit was merited. [*Washington Post*, 5/25/01; *CBS MarketWatch*, 4/25/03]
 - **CPSC Chairman Ann Brown:** "When retailers don't report, that means dangerous products continue to be sold to unsuspecting consumers," CPSC Chairman Ann Brown said. "Wal-Mart said it's so large it wasn't organized to know there was a problem. But being the nation's largest retailer is not an excuse for not reporting, especially when 29 incidents occurred in their stores, with several consumers having to be sent away in ambulances." [*Washington Post*, 5/25/01]
 - **Wal-Mart Spokesman Bill Wertz:** "We had no reasonable basis to conclude there was a defect that posed a risk of serious injury to our customers," he said. "We sold over 50,000 pieces of that equipment . . . in some of our 2,000 Wal-Mart stores and 400 Sam's Clubs. We received only 40-some complaints alleging a wide variety of injuries, from a scratch on the head and a broken arm to a bruised tailbone. It's not exceptional to get claims of injury associated with exercise equipment. People use it incorrectly, assemble it incorrectly." [*Washington Post*, 5/25/01]



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- **April 2003: Wal-Mart Settled Exercise Suit, Agreed to pay \$750,000 Penalty and Report Data to CPSC.** Wal-Mart settled the lawsuit, agreeing to pay a \$750,000 civil penalty. It was first time a retailer had been sued and paid a penalty for failing to report a safety problem. Additionally the settlement ordered that “Wal-Mart shall establish and maintain internal recordkeeping and monitoring system designed to assure its compliance with the requirements” of the law. [CPSC and DOJ Press Release, 4/25/03, <http://www.cpsc.gov/cpscpub/prerel/prhtml03/03118.html>; Wal-Mart Penalty Agreement, 4/23/03, <http://www.cpsc.gov/cpscpub/prerel/prhtml03/03118.pdf>]
- **April 2003 – October 2004: Wal-Mart Flooded CPSC with Data, Including Areas Not Regulated.** After agreeing to forward all incidents to the Consumer Product Safety Commission as part of its lawsuit settlement, Wal-Mart “sent a haystack of reports” to the agency, much of it unrelated to safety or products the agency regulated. [*Washington Post*, 3/9/05]
- **October 2004 – January 2005: Wal-Mart Agreed to Selective Reporting with CPSC.** USA Today reported, “Between October 2004 and Jan. 28, 2005, Wal-Mart red-flagged about 370 of the 1,200 total reports it sent to the CPSC; the commission says it’s investigating 113 of those.” [*USA Today*, 3/8/05]

March 2005: CPSC Announced New Guidelines Developed with “Now-Chastened Wal-Mart.” USA Today reported, “The Consumer Product Safety Commission is issuing new guidelines for how businesses should report product hazards, modeled on the efforts of a **now-chastened Wal-Mart**, which spent years fighting the agency about such reports. ... ‘It’s sort of a lucky break that we started with Wal-Mart, because they’re the biggest seller of consumer goods,’ CPSC Chairman Hal Stratton says. ‘We’re going to get all kinds of new data that we never had before.’” [*USA Today*, 3/8/05, emphasis added]

ADDITIONAL RESOURCES

- Consumer Product Safety Commission: www.cpsc.gov
- Wal-Mart Stores – Product Recalls: <http://www.walmartstores.com/GlobalWMStoresWeb/navigate.do?catq=51>
- Government Recall information: www.Recalls.gov



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