



Leading the Marketing Community

March 3, 2008

The Honorable Mark Pryor
United States Senate
SD-257 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Pryor:

I am writing on behalf of the Association of National Advertisers (ANA) to share concerns we have with certain provisions of S. 2663, the CPSC Reform Act.

The provisions, found in Section 11 of the bill, would require manufacturers, distributors, or retailers of children's toys containing small parts to include warnings on or immediately adjacent to internet and catalogue advertisements that the products pose specific hazards.

ANA leads the marketing community by providing its members insights, collaboration and advocacy. ANA's membership includes 340 companies with 9000 brands that collectively spend over \$100 billion in marketing communications and advertising in the United States annually. The ANA strives to communicate marketing best practices, lead industry initiatives, influence industry practices, manage industry affairs and advance, promote and protect all advertisers and marketers.

We believe that protecting children from choking or other hazards is extremely important. However, it is far from clear whether Section 11 of S. 2663 provides the best means to serve that purpose. Hazard warning disclosures typically are given at the point of purchase, such as on labeling or in material accompanying the product, and not through advertising. Providing these warnings at the point of sale directly signals to the consumer the product's hazards. We fail to see how additional requirements mandating disclosures in advertisements, which are typically not viewed at the point of purchase, would enhance consumer safety. It should be remembered that there could be multiple warnings for some products.

Apart from these general policy concerns, the advertising disclosure requirements could also raise serious constitutional issues. Any restrictions on advertising must be "narrowly tailored" and "no more extensive than necessary to meet the government's asserted interest." *Central Hudson Gas & Elec. v. Public Serv. Comm'n*, 447 U.S. 557 (1980). Additionally, in *Thompson v. Western States Medical Center* (535 U.S. 357 (2002)), Justice Sandra Day O'Connor, writing for the majority of the Court, stated "If the First

Amendment means anything, it means that regulating speech must be a last – not first – resort.” It is clear that requiring warnings about a product’s hazards everywhere a product is discussed is excessive and cannot be the government’s first resort.

The House of Representatives’ version of the bill (H.R. 4040), while it does not deal explicitly with the issues of information overload, nevertheless would require the CPSC to at least consider issues such as placement and size of warnings in a rulemaking. We would hope that the Senate, in its consideration of the bill, would move to a similar approach and provide the CPSC sufficient flexibility through rulemaking to deal with all of these important issues.

I would be glad to discuss our concerns with S. 2663 with you. I can be reached at 202-296-2359 or at djaffe@ana.net.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Jaffe". The signature is fluid and cursive, with the first letter of the first name being a large, stylized "D".

Daniel L. Jaffe
Executive Vice President
Government Relations