



Quality Certification Alliance

Member Newsletter

Quality and Safety. Delivered.

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What's A Children's Product? It Depends

Updates from the CPSC continue to define this ever-changing class of merchandise.

Editor's note: On September 29, the Consumer Product Safety Commission (CPSC) approved revisions to a proposed interpretative rule, "Definition of a Children's Product," that will now become the defacto regulatory guideline. The following is an update to a previously published QCA Newsletter article.

Until the passage of the Consumer Product Safety Improvement Act (CPSIA) by Congress in 2008, most people were confident they could identify a children's product from a general use product. Selling business-to-business products, few in the promotional products industry would have characterized their wares as children's products.

However, it turns out that how children's products are defined does pertain to the promotional products industry—in ways many never expected.

What Is A Children's Product – Pre-August 2008

In defining Children's Products, the Consumer Product Safety Act states:

"A consumer product designed or intended primarily for children 12 years of age or younger... the following factors shall be considered:

- (A) "A statement by the manufacturer about the intended use of such a product, including a label on such a product if such statement is reasonable
- (B) "Whether the product is represented in its packaging, display, promotion or advertising as appropriate for use by a child 12 years of age or younger
- (C) "Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger
- (D) "The Age Determination Guidelines by the Commission staff in September 2002, and any successor to such guidelines"

[Consumer Product Safety Act, Section 3 (2)]

Additionally, CPSIA has added another point of distinction between the two types of products. Children's products are certified as compliant with regulatory requirements by using the industry best practice of third-party testing by an accredited laboratory, while general use items simply require self-certification by the manufacturer or importer. Companies are also required to provide supporting documentation (third-party testing reports) to the customer on demand—arguably a minor change. However, the expectations of how business is conducted and what documentation must legally be provided with an order has resulted in increased scrutiny on the definition of what is and what isn't a children's product.

Is It Or Isn't It:

Evaluating Your Product With The New Clarification

Product evaluation is a normal step in the design and development processes of all QCA Accredited companies. The now amended final interpretative rule expands on the set of criteria established under CPSA.

The new final rule expressly states a manufacturer's statement regarding intended use of a product and any labeling should be consistent with the expected use patterns of the product. Simply stating "Not intended as a children's product" is insufficient to preclude determi-

nation of the product as a children's product.

Similarly, packaging, advertisement, display materials and printed should convey a consistent message between intended use and expected market demographic. Displaying an item in a catalog clutched in the hand of an enraptured child sitting among other children may very well imply that product is intended as a children's product.

In contrast, packaging an item commonly recognized as a children's product with a general use product doesn't make the children's product any less a children's product.

To assist manufacturers and importers, the final interpretative rule identifies a set of factors to consider in distinguishing a children's product from a general use product

- Small sizes: Is the product scaled to child proportions? Exaggerated features that simplify the product's use: Does the product have larger buttons or touch pads? Safety features not found on other similar products: Does the product have blunted edges, rounded points or bumpers?
- Colors commonly associated with childhood: Are pinks, blues, pastels or bright primary colors used as base colors in the theme?
- Decorative motifs commonly associated with childhood: Are cartoonish figures or educational subject matter, such as numbers or alphabets, incorporated in the product's theme?
- Features that add to the attractiveness but not to the utility of a product: Do embellishments such as cartoons, bows or other decorations add to the functionality of the product?
- Play value: Would a child be entertained or amused by the product?

All five Commissioners agree that answering "yes" to any one of these questions is insufficient to categorically assign a definition. However, the greater number of affirmative answers increases the likelihood that an item would be viewed as a children's product by the CPSC. To clarify, even then, it may still depend.

Narrowing The Definition

The final interpretative rule, in fact, removes much of the ambiguity of the original proposed rule. The legislative language of "primarily intended for use by children 12 and under" is restored from the proposed "significant proportion of the population" measure.

The final rule also defines "for use by children" to mean children will physically interact with the product. "Reasonable foreseeable use" takes the place of the more vague general affordances and mitigates some of the risk of failing to anticipate misuse of the product.

Applying The Definition To Promotional Products

Do people use promotional products in unintended ways? Of course. Do promotional products manufacturers need to plan for this use? Absolutely. The determination of a children's product, however, is based on the evaluation of features and the four criteria outlined in the CPSA that are weighted toward the obvious and intended usages.

In determining "foreseeable use," an example might be the stuffed tiger that accompanies a delivery company's corporate holiday gift pack. Stuffed animals are age graded and widely recognized to be attractive to children – as they are two criteria from the four listed in CPSA. Even if the product's intended use is for decoration on a gift pack, it is reasonable to consider that a stuffed animal will be passed on from the gift recipient

to the child and end up in the hands of the child.

Cost is also a factor relied upon for determining the intended consumer audience. Cost frequently reflects the complexity of design, size and quality of materials used in manufacturing a product, and the location where an item such as a promotional product may be sold or given away. In fact, an express exemption for model railroads popular among many middle-aged hobbyists is written into the final rule and used to illustrate the point regarding the difference between a children's product and a product intended for general use in terms of cost and complexity.

A third factor modifying the evaluation of a product is the likelihood a product would be in a child's environment—essentially a home, school, church, afterschool activity area and playground—and that the child would directly interact with the product. As a rule, furnishings are considered general use products. Products sized, colored or decorated to specifically appeal to a child or to be used with a child in those environments are evaluated as children's products. *General use items that are attached to a product in a child's environment or are subsequently decorated in a manner that may be attractive to a child may be transformed from general use into children's products.*

An Ongoing Dilemma: It Depends

The fact that an otherwise general use product may become a children's product by merely including it in a kit (e.g. a paper clip for demonstrating magnetic attraction included in a school science kit) that may be distributed to a child or decorating a general use product with a childish theme (e.g. a string backpack, a DVD) may transform the product cuts to the heart of the dilemma facing the promotional products industry: When does a product become a children's product? Per a very pointed exchange between the Commissioners on this point, it depends.

Next Steps:

What The Interpretative Definition Offers

As an accreditation body, QCA may not offer applicants or accredited companies legal advice. As was alluded to in the Commission's meeting, it may be advisable to submit certain products to the CPSC for review and determination, much as Customs and Border Protection might be asked to issue a binding ruling on a tariff classification.

One thing is clear. As an interpretative rule, its effect is immediate.

As documented in the certification process, QCA Accredited Companies have incorporated a product evaluation and review process in their systems prior to adopting any item into a product line. To provide the greatest protection and assurance to the customer, it is considered best practice to continuously update most design, development and sourcing processes used to evaluate product. Not only is the guidance offered by the Final Interpretative Definition for Children's Product a best practice, but it is also defacto regulation as discussed by the Commission in the vote to approve the measure. QCA applicants and accredited companies are encouraged to review their programs to ensure processes reflect this new guidance.

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**The Economics of Sourcing Decisions:
 A Book Review**

With the diffusion of resources, the world may be becoming flatter. But underlying regional factors can present a risk to doing business in an emerging market. Recently published, *Winning in Emerging Markets: A Road Map for Strategy and Execution* by authors Tarun Khanna and Krishna G. Palepu provides insight and tools for decision making in times of change.

August's QCA Newsletter offered readers tools for evaluating and addressing risk related to supply chain security and product safety. In the past month, the United States Congress has voted on a bill that would allow the President to label and possibly sanction countries as a currency manipulators (read: China), while the Consumer Product Safety Commission has passed a sweeping overhaul to the definition of Children's Products. (See previous article.) Such global challenges continue to impact what and how QCA-accredited members provide value to your customers.

The Business Decision

In Economics 101, Adam Smith advises us that markets develop and processes are segmented based on demand and competitive advantage. David Ricardo further cautions us against over concentration of resources and production to ensure healthy profits.

Winning in Emerging Markets takes a broad perspective incorporating both international and domestic markets to analyze "institutional voids" and business strategies companies implement in their efforts to manage risks. Khanna and Palepu also provide a useful framework for considering future opportunities.

Market Fundamentals

Three factors shape a business strategy in an economy: the supply of product, labor and capital. The relative development of physical infrastructure and institutional development combine to distinguish between emerging and developed markets.

Few today would refer to China as an emerging market. With its miles of super highways, network of airports and multiple telecommunications providers, China's infrastructure rivals the infrastructure of most Western countries.

A similar argument may be made for developing institutions, although less forcefully. Increasing national wealth and the availability of financial tools, increasing level of education and professionalism among the population and increasing quality of healthcare all point to institutional development taking hold throughout the economy. An improving climate for intellectual property, as demonstrated by recent wins in Chinese courts by Western business concerns and, yes, true representation of workers rights, as witnessed by the strikes of the 2010 Summer are, likewise, other early indicators of shifts in the traditional institutions.

An example of institutional development you might not consider in evaluating a partner is the domestic regulatory and enforcement environment.

Where institutions are absent or underdeveloped, companies must consider work-around solutions, should they decide to continue with a business plan.

Calendar of Events

QCA Board Conference Call	Nov 11, 2010
ICPHSO Symposium, London	Nov 28-29, 2010
PPAI EXPO	Jan 11-14, 2011
Annual QCA Board Meeting	Jan 11, 2011

Khanna and Palepu refer to such absences or lack of development as institutional voids.

Managing Risk: A Business Strategy

For Khanna and Palepu risk is synonymous with 'transactional difficulty.' Transactional difficulty is ultimately responsible for market failures and acts to deter potential participants from engaging in business opportunities they might otherwise consider. The primary sources of difficulty emanate from:

- Unreliable sources of market information
- Uncertain regulatory environments and
- Inefficient judicial systems

These categories drawn broadly and viewed through the prism of product, labor and capital markets allow *Winning in Emerging Markets* to illustrate its premise through case studies.

Unreliable Sources of Market Information

When people have inadequate information about goods and services, we tend to use bargaining as a means of determining value. The logic, of course, is that a seller knows the true market value of the commodity and will not sell a commodity to a purchaser for a price less than it cost the seller to manufacture or procure the commodity. Examples might include:

- A new product program
- Your company staffs a newly created compliance position
- A mortgage banker bundles high risk assets and sells them to an investment house

By introducing market intermediaries, the information about a market may be improved. Market intermediaries frequently provide analysis and advice. Other third parties may provide certification.

For the promotional products industry, these intermediaries include distributors, domestic importers, search engines and firms, forwarders, agents and third party inspectors, as well as national and international bodies such as the US Consumer Product Safety Commission and the International Laboratory Accreditation Cooperation that in their respective capacities monitor the quality of the goods and services within their purview provided to the market. Adjudicators such as courts, arbitration panels and mediators may also have a hand in clarifying information.

Without some market intermediaries such as an agent, a search firm or a testing lab, your favorite supplier / base material / an innovative local manufacturing technique would remain unknown to you. Intermediaries facilitate markets with their experience, expertise and credibility.

As a promotional products manufacturer and/or importer, your company may decide to employ people internally, engage third parties to provide information or rely on available certifications to improve the reliability of information about your product. All are valid business strategies to which unique cost structures are associated. Evaluating the maturity of the market you are working in and your company's internal skill set and appetite for risk may determine your decision to engage intermediaries.

Uncertain Regulatory Environment

Most US-based manufacturers and importers conduct their internal accounting according to General Accepted Accounting Principles (GAAP), satisfying most Internal Revenue Service auditors' questions. Rules and interpretations of those rules may change as more complex financial tools are employed as part of one's business strategy. The use of letters of credit (LC), telegraphic transfers (TT) and so forth may all be legitimately used in commerce, but as a rule, are regulated, if not domestically in the market, by the laws of country from which the tool is issued.

In countries where foreign ownership of assets is treated differently than local ownership, businesses may be structured to avoid burdensome additional oversight. Certainly, the threat of nationalization of foreign-owned assets may give a potential investor pause, considering whether to

invest through a third party or to invest at all!

Over the past ten years, the global consciousness raising related to environmental stewardship and sustainability has been remarkably successful. For many countries, the result of these efforts is the formation of a domestic environmental protection department within their governments charged with developing, implementing and policing policy.

The challenge, of course, is the uneven and continually shifting standards that leave a manufacturer compliant one day and out of compliance the next by virtue of the sun having risen on the new day. Effective mechanisms of publishing and communicating government-issued directives go a long way to creating a sense of predictability and understanding on such evolving processes.

Applying this same thinking to the Consumer Product Safety Improvement Act of 2008, many promotional product manufacturers and importers have determined the state of the product safety regulatory environment to be so unsettled and uncertain for specific product categories that they have dramatically scaled back their assortment of these products or exited the category entirely.

Inefficient Judicial Systems

Some of the happiest days in memory are those that we entered into agreements – starting a new job, opening a new business, placing a big order. In the end, though, it's business. Even, well-defined agreements may fail, forcing parties to the agreement to seek external remedies.

Where parties have unequal standing, disadvantaged by legal processes or length of time to resolution, to mitigate unnecessary risks, a company is likely to engage guards that insulate the larger corporate interests.

Frequently, in setting up a joint venture, investments can be made in capital intensive equipment, technology transfers or raw material supplies. Some partners will segment the manufacturing process to avoid dissipating the assets they bring to a relationship where the future is uncertain and legal protections are less than robust or efficient.

Asking the Right Questions

Khanna and Palepu have assembled a list of questions for spotting the institutional voids that result in transactional difficulties. Once an institutional void is identified, companies considering pursuing business opportunities in an emerging market must ask themselves how to proceed:

- Replicate or adapt?
- Compete or collaborate?
- Accept or attempt to change market context?
- Enter, wait or exit?

How your company addresses difficulties that can be anticipated are the strategies that create your unique competitive advantage.

Whether it's relative infrastructure development, currency shifts, availability of resources or evolving customer requirements, QCA members are continuously faced with business challenges, challenges that don't change the fact that all product must continue to meet compliance requirements. *Winning in Emerging Markets* maps a number of strategies companies may find helpful in evaluating direction most suitable for your own company.

Quality Certification Alliance is a Chicago, Illinois based independent accreditation organization that addresses the need for measurable compliance and particularly product safety within the promotional products industry.

QCA Executive Director is D. Fenton. For full articles and references and additional information on the organization, visit www.qcalliance.org.