

April 2007

*The Fashion Group at Schiff Hardin LLP*

*The Fashion Group  
at  
Schiff Hardin LLP*

David Jacoby  
212.745.0876  
djacoby@schiffhardin.com

Judith S. Roth  
212.745.0878  
jroth@schiffhardin.com

Maxim H. Waldbaum  
212.745.0815  
mwaldbaum@schiffhardin.com

Stacie R. Hartman  
312.258.5607  
shartman@schiffhardin.com

Chris L. Bollinger  
312.258.5724  
cbollinger@schiffhardin.com

Lori D. Greendorfer  
212.745.0814  
lgreendorfer@schiffhardin.com

Amy M. Rubenstein  
312.258.5625  
arubenstein@schiffhardin.com

Preston C. Delashmit  
404.437.7050  
pdelashmit@schiffhardin.com

Robert E. Lesser  
404.437.7051  
rlesser@schiffhardin.com

Marc Silverman  
212.745.0872  
msilverman@schiffhardin.com



# DON'T ACCESSORIZE WITH LEAD

## The Current Issue

The issue of lead in accessories is about to be in the public eye once again. The federal government agency which regulates product safety has just closed a comment period on a proposed notice of rule-making governing the presence of lead in certain products. Among other possibilities, the Consumer Product Safety Commission will consider banning products which have any lead or lead exceeding certain levels.

## Background

Lead is often used in consumer products, including fashion jewelry, because it is inexpensive, easy to mold, adds luster to metal and is resistant to corrosion. But lead is a potentially toxic substance when it is present at high enough levels and is ingested or inhaled in sufficient quantities. Young children are particularly at risk from lead consumption because it can harm their mental and physical development, particularly the development of the brain and nervous system.

There has been extensive publicity over the last few years about the health risks to young children from exposure to lead. Media attention first focused on the risks associated with lead in gasoline. More recently, risks to young children living in older buildings with chipping or peeling lead paint on walls, ceilings or windows took center stage, and were the focus of government regulation and private personal injury lawsuits centered on residential lead exposure.

Now lead in consumer products, including accessories, is increasingly in the headlines. In 2004, four toy jewelry importers agreed at the request of the U.S. Consumer Product Safety Commission to recall over 150 million units of children's metal jewelry intended for vending machines owing to potentially high lead levels in some of the jewelry. A bracelet sold in Disneyland in 2005 mislabeled "lead free" was recalled for containing 166,000 ppm (parts per million) of lead — an extraordinarily high lead level. In February, 2006, a four-year-old girl died after swallowing a heart shaped metal charm with extremely high lead levels which had been provided as a free gift with the purchase of Reebok sneakers. In August, 2006, Juicy Couture agreed to a voluntary recall of bracelets made in China because of high lead levels. In November, 2006, seven of thirteen items, including bracelets and pendants, were pulled off the shelves in the Capitol Hill gift shop after testing ordered by Sen. Barack Obama of Illinois and Rep. Henry Waxman of California because they contained dangerously high lead levels.

## Federal, California Rules

While lead in consumer products is not banned, lead levels are increasingly regulated. The Federal Hazardous Substances Act, 15 U.S.C. § 1261, provides that household products that expose children to hazardous quantities of lead under reasonably foreseeable conditions of handling or use are hazardous substances. Pursuant to an enforcement policy announced in 2005, the Consumer Product Safety Commission may conduct a screening test and seek to recall any product with a component part having a lead content exceeding 600 ppm or .06%. In December, 2006, the Consumer Product Safety Commission announced its intention to go even further by writing a new rule for children's jewelry containing more than .06 percent lead by weight, banning it outright.

California has been in the forefront on the state level. Proposition 65, California's major consumer disclosure statute, requires that consumers be warned of potential health risks by proper labeling or other means where the consumer products sold in the state contain levels of chemicals determined by the state to present a risk to public health. Proposition 65 is a powerful statute because it permits not only the government but also consumers to bring enforcement actions when they discover consumer products being sold at retail without proper warnings. Lead is a listed substance under Proposition 65.

In June, 2004, California's Attorney General filed a lawsuit against more than a dozen major retailers, including Macy's, Target, Wal-Mart, Nordstrom and Claire's, among others, claiming that they had violated Proposition 65 by failing to warn the public about the health risks of exposure to high levels of lead contained in jewelry being sold in their stores. The retailers settled the lawsuit, agreeing to pay damages, establish a jewelry testing fund and fund an educational program to increase consumer awareness about the risks of lead exposure. They agreed further that they would not sell products with lead levels at or exceeding 600 ppm in metal or 200 ppm in plastic components. The settling retailers also agreed that they would inform their suppliers and require that they eliminate or significantly reduce the lead content in their products. While legally binding only in California, accessories suppliers should expect that national retailers will impose these criteria on a national basis.

## What To Do?

What should an accessories supplier do to manage lead-related risks? The first step is being aware that lead is a potential problem. Get information about the components of your products at the earliest possible stage, preferably before the product is introduced into commerce, to lessen potential costs down the road. Learn whether lead is present and at what levels by testing the product.

The best solution is to make your products lead free. If that is not possible, the Guidance published by the U.S. Consumer Product Safety Commission is instructive. It advises that consideration be given to the following factors: the amount of lead in the product; the age and foreseeable behavior of the intended consumer; the foreseeable duration of exposure and the life cycle of the product. If the product creates issues in these areas, make sure that it comes with the required warnings. If the product is in distribution and lead levels are too high, consider a voluntary recall. Taking early corrective action will safeguard the public, the brand and your business relationships.

© 2007 Schiff Hardin LLP

This publication is for the general information of clients and friends of our firm. It does not provide legal advice for any specific matter.

Readers should consult a lawyer directly for such advice. This publication, or parts of it, may be considered attorney advertising material under professional conduct rules applicable to lawyers.

Schiff Hardin LLP is a general practice law firm with 400 attorneys, founded in 1864.

The Accessories Council is a not-for-profit, national trade association that was established in 1995 with the mission of increasing consumer use and awareness of accessories.

[www.schiffhardin.com](http://www.schiffhardin.com)

Chicago

Washington

New York

Lake Forest

Atlanta

San Francisco