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Understanding The CPSC's Big Win Against Spectrum Brands

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Law360, New York (December 16, 2016, 3:23 PM EST) -- It is not often that federal courts consider and interpret provisions of product safety laws administered by the U.S. Consumer Product Safety Commission (CPSC) such as the Consumer Product Safety Act (CPSA). Over recent weeks, not one, but three federal courts have issued opinions concerning federal product safety laws: the 10th Circuit overturned the commission's rule that effectively banned the sale of small rare-earth magnets; a Colorado federal court penalized a magnets company for selling a previously recalled product; and a Wisconsin federal court granted a summary judgment motion in favor of the government against a company who allegedly failed to report timely under Section 15(b) of the CPSA.



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While all three opinions are important in their own right, this article focuses on the CPSC's summary judgment victory against Spectrum Brands Inc. in its late reporting and civil penalty case against the company.

On November 17, a Wisconsin federal district court essentially held in the government's case against Spectrum that (1) the company failed to timely report defective coffee pots in violation of Section 15(b) of the CPSA because they could create a substantial product hazard, and (2) the government's imposition of a civil penalty pursuant to the CPSA was not in violation of Spectrum's statutory or constitutional due process rights.



Matthew Howsare

In doing so, the court rejected Spectrum's procedural and substantive arguments, including that the CPSC's claims were time barred and that the CPSA's reporting requirements are unconstitutionally vague.

Brief Case Background

Earlier this year, the Department of Justice and the CPSC alleged that a company acquired by Spectrum (Applika Consumer Products) knowingly failed to timely report under Section 15(b) of the CPSA a hazardous defect relating to certain Black and Decker brand coffee pot handles. The complaint alleged that Spectrum had received approximately 1,600 consumer complaints over a four year period (2008-2012) related to the breakage of the pots' handle resulting in coffee spillage and burns on consumers, yet delayed in informing the CPSC.



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Spectrum's overarching response to the filing of the lawsuit was that the defects in the coffee pots were never a substantial product hazard sufficient to give rise to a reporting obligation to the CPSC under Section 15(b) of the CPSA.

Specifically, Spectrum asserted, among other arguments, that (1) the CPSC's claims against it were time barred under the so-called Gabelli doctrine; (2) the CPSA's reporting requirements are unconstitutionally vague; (3) the CPSC failed to provide fair notice that a report was required in

light of its investigations of other Spectrum coffeemakers; (4) the CPSC's late-reporting determination was arbitrary and capricious; (5) Spectrum had no duty to report because the CPSC had already been "adequately informed" of the handle failures; and (6) the CPSC did not authorize the CPSC to seek certain forms of injunctive relief including the establishment of a compliance program and prospective liquidated damages in the event of noncompliance.

The Summary Judgment Opinion

The court granted summary judgment to the government, finding that Spectrum violated the CPSCA, having failed to file a Section 15(b) report until years after its reporting obligation initially arose. In doing so, the court rejected all of Spectrum's arguments with the exception of Spectrum's claim regarding certain forms of injunctive relief sought by the CPSC, which will be decided at a later date.

Notably, the court also concluded that the commission does not need to articulate its reasoning for a civil penalty amount in writing and provide more transparency in the process generally — a complaint often raised by industry defendants.

In its opinion, the court extrapolated on the following key principles concerning a company's reporting obligation to the CPSC as well as the commission's authority to impose civil penalties for violations of this provision (or others) in the CPSCA:

Spectrum Had a Duty to Immediately Report Under Section 15(b) of the CPSCA

The court held that, under the facts of this case no reasonable jury could find that defendant "immediately" informed the CPSC about "information which reasonably supports the conclusion" that the carafes "contained a defect which could create a substantial product hazard." According to the court, Spectrum had information by May 2009 that supported the conclusion that the defect on the carafe handles posed a substantial product hazard.

The court placed great emphasis on what it called the "driving principle" of the CPSCA's reporting requirement: "companies are strongly encouraged not to wait to report until a product defect causes a serious injury, but rather to report when they first appreciate that their product may contain a defect that could injure people, even when the risk of serious injury is in doubt."

Relatedly, the court found that the CPSC was not "adequately informed" of the risk posed by the coffee pots because the agency only knew about a handful of the failures involving a broken handle. Instead, the court basically found that the commission must have essentially the same material information as the company. In this case the court found it compelling that the company knew of 79 more failures than the CPSC in mid-2009 and over one thousand more failures than the CPSC in late 2010.

The CPSCA's Reporting Requirement is Not Unduly Vague

The court rejected Spectrum's argument that the reporting requirement contained in the CPSCA and related guidance in CPSC regulations is unconstitutionally vague. Instead, the court concluded that "a ready response to defendant's complaint that this guidance leaves it uncertain as to the scope of its reporting obligation is obvious: when in doubt, report. ... The statute, the CPSC, and the courts are not talking about existential doubt, but rather about concrete, quantifiable doubt born out of the existence of the factors identified in the statute and regulations, including the potential hazard created, the number of reported defects and injuries, and the number of potentially defective products that are in commerce."

The court further rejected Spectrum's argument that it did not have fair notice of its duty to report based on the CPSC's inaction in prior cases involving the breakage of coffee pot handles. The court stated that "[O]n its face, [the threshold for reporting a potential defect] is a lower standard than whether a substantial product hazard actually exists. ... [T]his difference is confirmed in practice, as less than 20% of non-fast track Section 15(b) reports result in the CPSC finding that a substantial product hazard exists."

The court added that "even if multiple cases involve products of a similar type or design and

present similar risks of injury, a number of factors, including the nature of defect, as well as the number and severity of injuries, could reasonably lead to different results in analogous cases." The court then went on to describe the differences between this case and the prior cases where the CPSC did not require a recall.

This part of the opinion is particularly important because it articulates that a reporting duty may still exist even though similar prior reports did not result in a CPSC finding that corrective action is necessary, because the CPSC's statutory threshold for reporting a potential product safety issue is lower than the threshold for the agency to require a corrective action.

The Commission's Approach to the Imposition of a Civil Penalty Did Not Violate Spectrum's Due Process Rights

Spectrum took issue with the lack of specificity with which the CPSC determined the civil penalty amount, specifically the lack of any written record explaining and justifying its decision to seek civil penalties. The court rejected this argument stating "it will not interfere with [the commission's] decision-making process."

According to the court, "nothing in the CPSC or the regulations mandates how the Commission should consider the civil penalty factors, nor expressly limits the civil penalty amount ultimately sought by the DOJ..." The court added, "transparency with respect to the factors the CPSC uses as a framework to determine what amount of civil penalties to seek is a far cry from transparency in the form of detailed, written records chronicling the commissioners' actual decision-making in any particular referral for a civil enforcement action."

This is another important development, because a wide range of stakeholders from industry trade associations to current commissioners have called for more transparency during settlement discussions at the CPSC, with respect to articulating the agency's rationale behind the decision to seek civil penalties and how the agency determines the appropriate dollar amount for a civil penalty. The court rejected the argument that the commission must or is required to put forward such a detailed rationale at this point in the process.

The Supreme Court's Ruling in Gabelli Does Not Require the Government to File Suit Before the Alleged Violation is Complete

Here, the parties agreed that the default statute of limitations for civil penalty enforcement actions requires plaintiff to file suit "within five years from the date when the claim first accrued." They disagreed, however, whether the duty to report continued until Spectrum knew that the CPSC had been adequately informed. In *Gabelli v. SEC*, the Supreme Court found that the SEC could not apply the "discovery rule" when bringing an enforcement action later than five years after the violation occurred and the claim "first accrued."

Spectrum argued that the CPSC's time to bring a claim began to run on the date the company obtained reportable information, and therefore the five year statutory of limitations period had expired. The court concluded, however, that Spectrum's reporting obligation was ongoing and not "complete" if it failed to immediately report to the commission.

The court found that Spectrum's violation was only "complete" once the company had actually submitted a report to the CPSC. In other words, the court applied the "continuing violation doctrine" as opposed to the "discovery rule."

The court found this consistent with the CPSC's purpose to encourage early reporting of defects to protect the public rather than individuals potentially waiting until the five year statute of limitations period runs and then reporting a product safety issue to the CPSC.

Conclusions

The opinion handed an almost total victory to the CPSC, and may have future ramifications on the product safety community as it relates to CPSC enforcement policy. The decision certainly covered much substantive ground with respect to CPSC law.

For starters, this opinion certainly lends new credence to the CPSC's common refrain to regulated entities — "when in doubt, report" — when deciding whether a product defect could present a substantial product hazard.

This case will be the subject of much discussion over the coming months, particularly as a new Republican administration and Congress take control. Although it is only one district court's opinion, it might affect future Congressional legislation, and is particularly significant mostly because so few opinions on this subject exist.

Spectrum and the government will next litigate the parameters of the civil penalty amount to be imposed. We will see whether an appeal is in the works after the penalty amount is decided.

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