

**U.S. House of Representatives Committee on Small Business
Testimony before Subcommittee on Oversight and Investigation**

**Susan Baustian, Winmark Corporation
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Thank you, Congressman Altmier, for inviting me to testify today, and to all the Committee members for taking the time to talk about this very important—and very timely—issue. I thank my fellow panelists for their thoughts and comments on the impact of the Consumer Product Safety Improvement Act on small businesses across the country, and thank acting Chairwoman Nord for her willingness to answer today’s critical questions.

My name is Susan Bastian, and I am the Director of Once Upon A Child stores for Winmark Corporation. Today, I am speaking on behalf of our hundreds of stores in, as we call it, the industry of “gently used” products.

My company, Winmark Corporation, owns two franchises that have been in business for over 20 years, Once Upon A Child (a store selling used children’s goods) and Play it Again Sports (selling new and used sporting goods), and have been significantly impacted by this bill. Although our company headquarters is in Minnesota, we have over 520 franchises across the country. What that amounts to are 500 store owners worrying about whether or not they comply with the law, 5000 employees scrambling to figure out how to comply, and 200 vendors feeling they do not have the resources it takes to test their products to ensure that they comply with these new standards. Last year alone, our two brands serviced over 7 million parents that are now confused as to what is safe or not for their children.

The ill-executed implementation of this legislation has brought fear into the industry, and that fear—especially in economic times like these—can bring a halt to successful and productive businesses. Our franchisees have a lot on the line that is driving this fear. Most of them have business loans where their homes have been used as collateral. They have a family in which their business provides for, and they all have a strong sense of giving back to the community by being at the forefront of recycling – they buy & re-sell product that children no longer use or have outgrown. They are fearful that the CPSIA will force them to give up their American dream – owning their own business.

I think what is really unfortunate is that this debate over the CPSIA has lead to finger pointing on an issue on which we all agree: ensuring the safety and protection of children.

Our store owners have dedicated their lives to providing safe, fun, and educational products for children of all ages, and now are having to rethink how they can continue to offer these products without violating this law.

We want to work *with* the Consumer Product Safety Commission to comply with this law, but the guidance issued thus far has been difficult to understand for many of our store owners. We do not want to have to shut our doors over legislation that we all agree *could* help children if implemented in an effective and productive way, but we need the help of the CPSC and Congress to clarify what is required of our store owners.

The Consumer Product Safety Commission has come out and stated that resellers such as Once Upon A Child and Play It Again Sports—as well as Goodwill, the Salvation Army, ARC, Church organizations, Garage sellers, consignment stores, sellers on ebay and any other small business reseller—do not have to test products, but our businesses are still liable if those products with banned substances are sold.

The CPSC recently produced a Handbook for Resale Stores and Product Resellers with the purpose being, “to help identify the types of products that are affected and to understand how to comply with the law, so you can keep unsafe products out of the hands of consumers.” Unlike the information that the CPSC supplies regarding recalls—a very specific list by brand & model number—the handbook is too general to effectively determine which products are safe to buy & sell.

For example, Page 7 of the handbook indicates that “items made of wood (without paint, surface coating or hardware) are OK to sell.” It also indicates that “Clothes with rhinestones, metal or vinyl/plastic snaps, zippers, grommets, closures or appliquéés are best to test, contact the manufacturer or not sell.” Unlike retailers of new products, our franchisees across the country have no idea how to determine if the painted blocks, toy trucks, dolls or even clothing they are buying and reselling contain lead paint or are made up of dangerous lead components or toxic plastics.

It will be a violation of the Act to sell an item that is known to have more than the acceptable limit. This violation can be a fine of \$5000 for each violation, which increases to \$100,000 on August 14, 2009. Being that the handbook gives us only guidance on determining which items are safe, the only way to be certain would be to test the product. However, each piece that is bought & sold is unique, and it would be too costly to test each item. With a house on the line, a family to care for, and a potential liability to deal with, fear has taken hold for many of these resellers.

Last year, Once Upon A Child paid families \$45 million for children's items that we purchased for re-sale, generating \$120 million in sales for our franchisees. Of that, \$23 million worth of clothing items were purchased, generating \$68 million in sales for our franchisees. For families, the money they receive from selling children's items can be used to supplement a parent's income, or may be used to buy items for their children—that they otherwise couldn't afford. For business owners, this income helped proved for their family. But now, many business owners and parents are worried they won't know when a snap or zipper contains lead, and like toys, they have no way to test these items.

The guidance issued on the sale of books has been equally frustrating. Last year, our stores paid families \$500,000 for books that we purchased for re-sale. This generated \$1.5 million in sales for our franchisees. I understand that there are certain bathtub books that may contain excessive amounts of phthalates [THAL-ates] and I would hope our industry will move away from selling these products, but most books—even if they contain trace levels of lead—are innocuous and should not be banned under this legislation. The American Library Association has done a tremendous job sorting through fact and fiction on the production of books in this country, and I commend their efforts to publicize what the industry has done since the 1970s to stop using metal-based paint in their books. But their work was not enough to get books excluded from the Act, and now we are all faced with how to sort through the books on our shelves. The clarification that books printed after 1985 will be considered “safe” was helpful, but it was not enough to ease the fear and frustration with the law.

It is because of the obstacles our business owners and families face that we need the Consumer Product Safety Commission to clarify the law so that parents aren't afraid to sell their children's items, or buy used clothing for fear that it might be banned by this legislation.

If there is one thing that has become clear through this process it is that we, as an industry, need more guidance and need more time to sift through our inventory, understand the new regulations, and find cheaper, more efficient ways of testing products. For my industry, it is critical that we are able to understand how we can better sort through our inventory and confidently buy & sell children's items without fear of selling something that is unsafe for a child, or facing consequences for violating the Act.

Changes like this do not happen overnight, and we need the help of the Consumer Product Safety Commission, as well as members of Congress, to ensure that we can continue to provide families with a resource to provide products at a value by being at the forefront of recycling. We need to know specifically what items are deemed unsafe for our children.

I thank you for calling this hearing on the impact of this law on small businesses, and particularly the thrift industry, and look forward to answering any questions you may have.

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