

CPSC Issues \$1.3 Million Civil Penalty for Failure to Report Hazardous Product

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At the end of October, the Consumer Product Safety Commission (CPSC) announced that it had reached a settlement with Spin Master Ltd. based on Spin Master's 2007 recall of "Aqua Dots" due to their toxic nature. Spin Master has agreed to pay \$1.3 million for its failure to timely report to CPSC the defects and hazards associated with the product.

Aqua Dots was a children's modeling toy that consisted of small beads of varying colors that would stick together after being sprayed with water. The recall of this product received significant national attention when it was discovered that, when ingested, the beads produced the controlled substance gamma hydroxybutyrate, commonly known as GHB.

CPSC staff alleged that in October 2007, Spin Master received multiple reports of children and pets becoming severely ill after ingesting the product, yet did not report these incidents to CPSC. CPSC only became aware of the potential problem several weeks later when it was independently notified of at least one poisoning incident. Given the severity of the potential poisoning, which included the risk of children becoming comatose, developing respiratory depression or having seizures, CPSC and Spin Master announced the nationwide recall within days of CPSC's becoming aware of the problem.

Based on the information Spin Master received in October, CPSC staff alleged that Spin Master knowingly withheld that information from CPSC while it investigated the issue. Spin Master's primary mistake was its failure to notify CPSC that it had received reports of severe poisonings for its product as required by section 15(b) of the Consumer Product Safety Act. Section 15(b) requires a manufacturer or importer to *immediately* inform CPSC upon receipt of "information which reasonably supports the conclusion" that a product fails to meet CPSC requirements, contains a defect creating a substantial product hazard or creates an unreasonable risk of serious injury or death.

CPSC concluded that even though Spin Master may not have known the cause of the children's illnesses, given the consistency and severity of the illnesses reported to the company, Spin Master should have known the product possibly contained a defect creating a substantial product hazard or creating an unreasonable risk of serious injury or death.

Spin Master does not admit guilt in the settlement agreement and defends the actions it took in investigating the potential defect. However, the size of the agreed-upon civil penalty, one of the largest ever for a failure to report, belies the severity of Spin Master's mistakes.

All consumer product manufacturers and importers must be vigilant in monitoring reports of harm caused by their products that are received from the public, especially with regard to children's products. It is incumbent upon manufacturers and importers to have appropriate procedures in place to track and respond to incident reports, including promptly notifying CPSC of potential defects, even when the root cause has not been identified. CPSC has made clear that failures to involve CPSC in the evaluation of products for recall once a company has received sufficient information to conclude there is a problem will be dealt with severely.