ANTITRUST, TRADE REGULATION AND
CONSUMER AFFAIRS SECTION

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The District of Columbia Bar

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RESOLUTION

The Consumer Affairs Committee[1]
of
The District of Columbia Bar
Antitrust, Trade Regulation and Consumer Affairs Section

The Consumer Product Safety Commission (CPSC) is an independent regulatory agency established by Congress in 1972 (Public Law 92-573). Its mandate is to protect American consumers from hazardous consumer products. It is responsible for over 15,000 consumer products. The agency is administered by five Commissioners appointed by the President with the advice and consent of the Senate. The CPSC has the authority to set mandatory safety standards, ban hazardous consumer products, initiate recalls for products which pose substantial hazards, and require labelling concerning hazards of consumer products. The Commission also is responsible for enforcing the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, the Flammable Fabrics Act and the Refrigerator Safety Act.

Over the past several years, many respected commentators have observed that the CPSC has not vigorously pursued its mandate to protect consumers from hazardous products. See, e.g., Report of the Consumer Federation of America, May 1987, by Mary Ellen Fise. Three particular concerns that have come to the attention of this Committee are:

(1) Commissioner vacancies have been left unfilled for long periods of time, at times making it impossible to have a quorum.

(2) The budget of the CPSC has been severely cut since its founding in 1972. For instance, the FY 1982 budget was cut by $10 million from the FY 1981 level, from $42.1 million to $32.1 million. The budget increased slightly in the years between FY 1983 - FY 1985, but was again cut in FY 1986. The budget for FY 1987 was $33 million. These cuts are even more severe when the effects of inflation are considered.

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[1]Standard Disclaimer - "The views expressed herein represent only those of the Section on Antitrust, Trade Regulation and Consumer Affairs of the District of Columbia Bar and not those of the District of Columbia Bar or of its Board of Governors."

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These budget cuts have substantially harmed the agency's ability to protect consumers. Experience has shown that funding at the present levels is inadequate for the CPSC to carry out its mandate.

(3) The Consumer Product Safety Act requires the agency to defer to voluntary standards where such standards adequately address the risk of injury and there is substantial compliance with such standards, rather than promulgate mandatory standards. In some cases, however, the CPSC has relied on voluntary standards under development at a slow pace, even where such standards have not been finalized. The agency's inaction, deference to industry and delay have reduced industry incentives to eliminate dangers. As a result, voluntary standards proceedings drag on excessively while avoidable consumer injuries and deaths continue to occur, voluntary standards are developed by industry without giving consumers the opportunity to attend, participate in discussion and vote on such standards, and industry is given the impression that inadequate voluntary action may be enough to satisfy the CPSC.

Accordingly, this committee makes the following recommendations:

(1) That a full complement of commissioners devoted to carrying out the mandate of the CPSC be appointed.

(2) That the CPSC budget be restored to its original level, adjusted to account for inflation, to enable the agency to properly execute its mandate.

(3) That the CPSC begin rulemaking to set mandatory standards to address a particular hazard wherever there is not a completed, finally balloted, voluntary standard to address it; that the CPSC abide by its mandate and not defer to a promise by industry that there will be compliance with a voluntary standard in the future; and that the CPSC defer only to those standards developed through an open consensus process which allows all interested parties to participate.