

What's In Your Paint?

PRODUCT

DESIGN & DEVELOPMENT

The motto “any publicity is good publicity” is not always the case. Imagine picking up the Sunday paper and seeing the headline, “Popular Retailer Recalls Millions of Children’s Toys.” Then, imagine the popular retailer in the article is you. It could — and does — happen.

This nightmare came true in August 2007 for Mattel when the company had to recall nearly 19 million of its toys made in China. The recall included 436,000 die-cast toy cars depicting the character “Sarge” from the animated film *Cars*. The paint used on the cars contained unacceptable levels of lead.

At the same time, Mattel recalled 18.2 million other toys because the small magnets inside the toys were powerful enough to harm children if swallowed. According to Mattel’s 10-Q ended September 30, 2007, the total recall cost, as reported in the quarters ended June and September 2007, was \$68.2 million.

While what happened to Mattel was certainly headline-grabbing, recalls are, unfortunately, not that uncommon for manufacturers of toys and other children’s products.

For example, between July 1, 2008 and June 30, 2009, 43 children’s toy hazard recalls, totaling approximately 3.2 million units, were posted on the U.S. Consumer Product Safety Commission’s website. In the same period, 113 “Other Children’s Products” recalls occurred, including clothing, furniture, jewelry and other general merchandise totaling 10.6 million units.

Most of the recalls occurred for a handful of reasons, including unacceptable levels of lead paint (in the United States, the tolerable level is 600 parts per million), and strangulation, choking, falling, and trap hazards. Other less frequently reported hazards are not listed.

Who Is Responsible?

Responsibility for providing safe products to consumers is everyone’s — from the manufacturer to the merchandiser. However, the retailer selling the product is often held responsible for the merchandise.

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Ownership of liability can be transferred to the manufacturer if the appropriate indemnification is written into the vendor contract. Unfortunately, this may only refer to tangible losses, such as the cost to recall the merchandise, lawsuits, and settlements that may result. It may not take into account intangible losses that may occur due to loss of consumer confidence and damaged reputation.

Imported Merchandise

Sourcing merchandise from Asia is a common practice. Financial incentives, including reduced labor and parts costs, make the practice desirable.

However, the risk to companies is becoming increasingly apparent. Of the 156 children's toy and "Other Children's Products" recalls reported through the U.S. Consumer Product Safety Commission between July 1, 2008 and June 30, 2009, approximately 88.5 percent involved manufacturers in Asia.

Although the risk associated with sourcing merchandise from Asian countries appears higher than in others, this does not suggest that retailers should stop sourcing all merchandise from Asia that is sold on shelves. It does, however, mean that businesses should become smarter and more educated about the merchandise they sell.

How Do We Prevent Recalls From Happening?

Not all recalls can be prevented; they will continue to occur for various reasons. But there are processes and procedures companies can put into practice that will help ensure the products they sell are less likely to be recalled. Partly due to the popularity of the Internet, product recalls can quickly become common knowledge, allowing for faster and broader customer awareness. This, in turn, encourages companies to focus on corporate social responsibility.

In recent years, companies have begun to hold vendors more accountable for merchandise they sell. Companies are requiring imported merchandise to be tested at agencies such as Bureau Veritas and Intertek. These third-party agencies are responsible for ensuring that merchandise purchased and intended to be placed on store shelves is acceptable to retailers and manufacturers and therefore to customers.

Testing requirements can be as basic as making sure a product is not toxic or as detailed as determining if packaging meets quality standards. There is obviously a cost associated with this process, but it is undoubtedly offset by the expenses a company can avoid due to recalls, lawsuits and product rework.

Dangerous Merchandise

When dealing with imported merchandise, it is both easier and more prudent financially to prevent dangerous or subpar-quality merchandise from being shipped than it is to return it. In foreign merchandise purchases, payment is often required prior to shipment. Therefore, it makes sense for companies to test merchandise

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before it is purchased and shipped. This way, they will not pay for merchandise that does not meet regulatory and other standards.

Knowing that merchandise does not meet required standards and being able to prevent its shipment will save the company many headaches. If dangerous goods are shipped and not identified until they reach the company's warehouse, the company will incur expenses for transportation (possibly both ways), destruction of merchandise (if not returned), rework of merchandise, import fees and labor costs to identify and remediate the problem. These additional fees occur if the company identifies the issue in time. If the issue is not identified before the merchandise reaches customers' hands, the cost is often much greater.

Who Should Test: The Company Or The Customer?

As product recalls have become more common, customers' knowledge about potential hazards — and their motivation to verify whether the products they buy are safe — have been on the rise. Today, consumers have access to many tools that allow them to test the safety of merchandise. A simple web search on a popular search engine for “test toys for lead” resulted in more than 27 million hits, including links to websites selling or displaying information about:

- Testing kits to identify lead and other hazards.
- Legislation such as the United Kingdom's restriction of Hazardous Substances and Waste Electrical and Electronic Equipment directives, and California's Proposition 65 safe drinking water program.
- Companies offering services to perform testing.
- Step-by-step directions (including photographs) on the proper testing procedures.
- Articles on recalls and how to keep children safe.

Company-Branded Merchandise - Even More Concerns

Most major retailers offer company-branded merchandise, which is usually advertised as equal to or better than a comparable national brand. That assertion — “equal to or better than” — is what companies need to support. For the sake of a company's reputation, ensuring the safety of branded products is essential because the company's name is tied to the product.

Companies should take the precaution of performing quality assessment testing, which analyzes merchandise for adherence to standards.

Examples include examining trail mix for the appropriate product mixture, evaluating lotion for the right viscosity, testing clothes for tear resistance, reviewing the physical safety of products (e.g., evaluating whether an item has sharp edges), and evaluating many other qualities that allow for product confidence and comparison to national brands.

This testing gives companies the comfort of knowing they have testing certification

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from a third party that has compared their product to the national brand. This proof of testing may help a company combat a lawsuit contesting that the product is inferior to the national brand.

Not Just Children's Merchandise

Of course, the risk of recalls is not limited to children's merchandise. The U.S. Consumer Product Safety Commission's website identifies four product categories other than the two children's categories identified earlier. They are: Household, Outdoor, Sports and Recreation, and Specialty. During the aforementioned one-year period from July 1, 2008 through June 30, 2009, more than 240 recalls occurred in these four categories.

Food Recalls

Food recalls in the United States are managed and monitored by the U.S. Food and Drug Administration (FDA). The FDA publishes recalls and alerts as soon as information about potentially dangerous products becomes available. In a statement on September 26, 2008, the FDA updated the health information advisory on melamine contamination caused by the use of Chinese milk powder. As of the end of September, the Chinese milk powder recall had caused global recalls and was linked to the deaths of four children, as well as more than 50,000 illnesses.

Some may argue that surely controls in the United States could not allow something like this to happen at a U.S. company. All anyone has to do is pick up a newspaper from the first two months of 2009 to realize this is not the case.

A major salmonella outbreak, responsible for the deaths of several consumers, as well as many illnesses, was traced to Lynchburg, Va.-based Peanut Corporation of America, which used contaminated peanut butter in many of its products.

It also sold the peanut butter to companies that used it in the manufacturing of their products. More than 200 companies have released recalls of over 1,000 products related to the mishandling of peanut butter at Peanut Corporation of America.

These large-scale instances reinforce the importance of strong controls and the need for knowledge when sourcing or manufacturing products abroad or domestically. They are reminders that we need to be concerned about the safety of the raw materials that go into making the final product as much as the safety of the final product itself.

Product Recall Risk Response Strategy

There are many phases of product sourcing. Companies can manage the different aspects of sourcing and implement practices to develop strong controls to try to prevent recalls. This is not always possible, and recalls are a fact of business. However, companies need to be prepared to act quickly if and when a recall occurs.

Maintain Consumer Loyalty

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Retailers and manufacturers strive to obtain and maintain consumer loyalty. It is difficult to build this loyalty — as well as customer trust — but both are very easy to lose. Retailers can spend years, even decades, building a customer base only to scare those customers away by something preventable. Customers trust that the merchandise sold to them is safe, and this trust should not be broken.

Key Questions To Ask

Concerns about product sourcing testing can be a sensitive area to discuss. Managers will often shy away from discussing concerns because they do not want to know the results, or they believe testing is being completed by another department. There are some simple questions to test sourcing that can help determine the company's level of compliance and management's mindset, including:

- Is merchandise sourced from overseas? If so, which countries is the company sourcing from?
- What are the quality control procedures around merchandise?
- How does the company test merchandise to ensure it meets regulatory and company specification requirements?
- Who determines what the merchandise is tested for?
- What percentage of merchandise sold is tested?
- Is merchandise ever sold before it is tested?
- Can merchandise be sold even if it fails the company's rigorous testing procedures?
- Can the company easily provide proof of testing for merchandise being sold?
- What is management's risk tolerance for product sourcing?
- If there is company-branded merchandise, are quality control procedures performed?
- How often is merchandise that does not meet company specifications shipped and accepted?
- How does the company confirm that unsafe merchandise is destroyed, so it does not end up in a discount store or overseas?
- Does the company periodically perform independent quality tests?
- How many product recalls did the company have in the past two years?

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