

Dangers of Partial CPSC Reports: The Kawasaki Penalty

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Consumer product companies that suspect a product either contains a defect or poses an unreasonable risk of injury are required to report that fact to the Consumer Product Safety Commission (CPSC) within 24 hours of reaching that conclusion – or risk a civil penalty, like Kawasaki received earlier this month.

The CPSC [announced in a press release](#) that Kawasaki had agreed to pay a \$5.2 million civil penalty both for untimely reporting of safety hazards involving recreational off-highway vehicles (ROVs) and for making a “material misrepresentation” to CPSC about those ROVs in the report it eventually did file. A “material misrepresentation” is what ordinary people call “lying.” Lying is a bad thing to do, particularly when a governmental agency is involved. Here, CPSC contends that Kawasaki initially reported only a subset of injuries and incidents, and chose to report only one model when other similar designs were equally affected.

Kawasaki insists that it complied with the reporting rules and vehemently denied trying to mislead anyone. Kawasaki may be correct. But the reality is that if a government agency thinks your company has lied to them, you are in a world of trouble — in this case, \$5.2 million worth.

Two Issues About CPSC Compliance

This penalty raises two issues that confront many of our clients when it comes to CPSC regulatory compliance.

First, the Kawasaki penalty underscores that a safety hazard report to the CPSC needs to not only be timely, but also complete. This means that when an issue has arisen across an entire platform, a company should not try to finesse compliance by reporting only some of the affected models or by reporting some incidents and not others. There can be tough calls to make from time to time, but in general, pursuing a “half a loaf” strategy is unwise. If the company has a problem, disclose it. Under the law it is CPSC’s job — not an individual company’s job — to decide what does and does not constitute a substantial product safety hazard. With the Kawasaki penalty, CPSC has made clear that it considers an incomplete report to be the equivalent of a false report.

Second, although not mentioned in the press release, the settlement agreement reveals that CPSC concluded Kawasaki had made a design change to address the hazards before notifying CPSC. This remains a huge no-no, and we cannot stress enough that safety design changes are tantamount to an admission of guilt in the eyes of CPSC when it comes to awareness of a safety hazard. Actions speak louder than words, and it is difficult for a company to claim it saw no hazard when that same company spent the money to adopt a fix that just so happened to address the issue. Simply put, if the issue is important enough to fix, it’s probably important enough to report.

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If this sounds like a no-win situation, remember that many hazard reports filed by companies do not result in a recall. Furthermore, there are many circumstances that, on further review, don’t require a report to the CPSC at all. In all situations, though, the question of whether to report, and which information to include in such reports, can



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