

 New Civil Liberties Alliance

May 9, 2024

VIA First Class Mail

The Honorable Alexander Hoehn-Saric
Chair
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

The Honorable Richard Trumka
Commissioner
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

The Honorable Mary T. Boyle
Commissioner
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

The Honorable Douglas Dziak
Commissioner
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

The Honorable Peter A. Feldman
Commissioner
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Jessica L. Rich
General Counsel
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

**Re: Notice of Request to Preserve All Documents and Electronically
Stored Information as Defined by Federal Rule of Civil Procedure 34
Regarding Dreamland Baby Co.**

Dear Chair Hoehn-Saric, Commissioners Boyle, Feldman, Trumka, Dziak, and Ms. Rich,

Please be advised that the New Civil Liberties Alliance (“NCLA”) has been retained by Dreamland Baby Co. (“Dreamland”) to pursue legal action against the Consumer Product Safety Commission (“CPSC”), Commissioner Richard Trumka, and potentially other agencies. You should anticipate litigation and take corresponding steps to preserve relevant evidence.

As you are aware, Dreamland develops, designs, produces, and sells infant and toddler products, including weighted sleep sacks and swaddles. Currently, there is no mandatory federal safety standard for wearable blankets and swaddles. Under the Consumer Product Safety Act (“CPSA”), industry members and standard-setting organizations “may create ‘voluntary standards’ that render regulation

unnecessary.”¹ Dreamland, through the American Society for Testing and Materials (“ASTM”) and along with members of the industry, CPSC staff, and consumers are in the process of developing a voluntary standard for wearable blankets and swaddles, which includes Dreamland’s products. A second draft of the voluntary standard is under review now.

Recent events, however, cast doubt on CPSC’s alleged commitment to the voluntary standards processes. On November 8, 2023, the Commission convened a meeting to consider its Fiscal Year (FY) 2024 Operating Plan to discuss, *inter alia*, proposed amendments. Commissioner Trumka proposed Trumka Amendment 3, which would have required CPSC staff to “pursue a mandatory standard to address foreseeable risks posed by [weighted sleep products for infants].”² The amendment would also have required CPSC to “update all safe sleep messaging and guidance to incorporate recent advice on weighted infant sleep products from the Centers for Disease Control and Prevention and from the National Institutes of Health.” As Chairman Hoehn-Saric observed, it was “[his] understanding that [CPSC] staff has not conducted the research necessary to draft a notice of proposed rulemaking in 2024[.]” and that “simply directing [the staff] to do it or wishing something to happen doesn’t reflect the work that has to go into a successful rulemaking that ultimately reflects the science and can be sustained over time.”³ The amendment was rejected by a 3-1 vote.⁴

Despite losing that vote, or perhaps because of it, Commissioner Trumka has since circumvented the CPSC’s carefully crafted processes by effectively orchestrating a stop sale of Dreamland’s lawful products. On April 15, 2024, Commissioner Trumka issued a statement titled “Beware: Weighted Infant Swaddles and Blankets are Unsafe for Sleep; Retailers Should Consider Stopping Sales” in which he indicated that his amendment had failed but retailers “do not have to wait for a *federal rule* to start protecting babies.”⁵ That same day, he also issued letters, on official CPSC letterhead, to several retailers who sold weighted infant sleep products, including Dreamland’s products.⁶ Those letters similarly disparaged these products and leave retailers, as well as the public, with the impression that products like our client’s have caused infant deaths.⁷ As Commissioner Trumka is aware, that impression is false. His statements are laced with misrepresentations and deceitful language and imagery about the safety of weighted sleep products like Dreamland’s.⁸ Nonetheless, retailers’ responses to his admonishment were swift. Within days of receiving Commissioner Trumka’s letters

¹ *Window Covering Manufacturers Assn v. Consumer Prod. Safety Comm’n*, 82 F.4th 1273, 1279 (D.C. Cir. 2023).

² CPSC, Minutes of Commission Meeting 13 (Nov. 8, 2023), <https://www.cpsc.gov/s3fs-public/Comm-Mtg-Min-FY-2024-Operating-Plan-Decisional.pdf?VersionId=GDwWSUy29P7SN9MpqVVWdX5Nn9xe36Vm>.

³ CPSC, Commission Meeting FY24 Operating Plan Decisional 20:28–20:55 (Nov. 9, 2023), https://www.youtube.com/watch?v=LHemQpZZBN0&list=PLPbI8bR243fHmCYA1a7pZ4l4wzhYjla_V&index=6.

⁴ CPSC, Minutes of Commission Meeting at 13.

⁵ CPSC, Statement of Commissioner Rich Trumka Jr. (Apr. 15, 2024), <https://www.cpsc.gov/s3fs-public/Trumka-Statement-on-Weighted-Infant-Blankets-4-15-24.pdf?VersionId=DKKBE2QXMxcKzfM2AqlXchE0fctDsNCa>

⁶ *Id.*; see also CPSC, Statement of Commissioner Rich Trumka Jr. (Apr. 26, 2024), https://www.cpsc.gov/s3fs-public/Trumka-Statement-Weighted-Infant-Products-4-26-24-with-attachments.pdf?VersionId=iK5EDmatuGu9_z2jKt8t8BaWndFKwWCh.

⁷ *Id.*

⁸ @TrumkaCPSC, X (Apr. 15, 2024, 3:16 PM), <https://x.com/TrumkaCPSC/status/1779951952559751190> (video of Commissioner Trumka discussing how weighted infant sleep products pose the “risk of death” and including an image of a swaddled infant with two dumbbells photoshopped on top of the infant’s chest).

the retailers, including Amazon, Target, Babylist, Nordstrom, Maisonette, and more, stopped selling weighted infant products, including Dreamland's.⁹ Commissioner Trumka does not have the authority to use the weight of his office to effectuate a stop sale on products when he was not able to achieve even a notice of proposed rulemaking through the avenues provided for by law. As a result of Commissioner Trumka's unlawful statements and actions, Dreamland has suffered tremendous financial losses. In fact, one retailer has stopped the sale of *all* of Dreamland's products, not just its weighted products.

Our client, founded and led by Tara Williams, who created the product for her son when he was an infant, was harmed by Commissioner Trumka's unlawful campaign and Dreamland's ability to keep operating is now in question. This ruination has occurred despite an utter paucity of evidence that Dreamland's products pose a safety hazard, and although they have helped over 1 million families achieve rest during a time many parents—especially working mothers—struggle to get enough sleep (which poses its own safety hazards). To be clear, Commissioner Trumka's actions here do not make any products safer, nor do they remove unsafe products from the market.

Dreamland hereby notifies the CPSC to preserve all documents and electronically stored information, drafts, copies and backup, as defined by Federal Rule of Civil Procedure 34, along with any paper files CPSC and/or its employees maintain related to Dreamland or its products, including, but not limited to weighted sleep sacks and swaddles. Given Commissioner Trumka's statements, this preservation notice should be deemed to include all weighted infant sleep products, whether Dreamland's products are specifically referenced or not. We are also aware that Commissioner Trumka made additional statements through various social media channels, and produced videos regarding his statements. Such materials, including drafts and unedited versions, are included in this preservation notice.

On information and belief, Commissioner Trumka, or his staff at his direction, have, at a minimum, engaged in communications or actions in violation of Section 6(b) of the Consumer Product Safety Act and/or demonstrating impermissible bias in violation of the Fifth Amendment of the U.S. Constitution. Because these claims, and others, turn on the communications, statements, and actions taken by CPSC, its Commissioners, and its staff, Dreamland considers these records as discoverable information in any future action.

This hold notice also applies to any communications made through unofficial channels, including but not limited to Commissioner Trumka's, and his staff's, personal email addresses, cellphones, third-party messaging applications, social media accounts, and direct messaging programs.¹⁰

⁹ *Id.*

¹⁰ *Cf. Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149 (D.C. Cir. 2016) (“[A]n agency always acts through its employees and officials. If one of them possesses what would otherwise be agency records, the records do not lose their agency character just because the official who possesses them takes them out the door or because he is the head of the agency.”).

Evidence that is potentially relevant to Dreamland's claims and that should be preserved includes the following, whether maintained on official CPSC communication channels and platforms or equipment (*e.g.*, computers, laptops, and cell phones), or on unofficial channels including Commissioner Trumka's, and his staff's, personal communication channels and platforms or equipment (*e.g.*, computers, laptops, and cell phones):

- All documents from January 1, 2021 to present related to CPSC's involvement in or knowledge of the recent effort to develop voluntary standards for weighted infant blankets and swaddles, including communications with members of the industry, consumers, retailers, and other agencies as well as internal communications.
- All documents related to the "Trumka Amendment 3" discussed above, including notes from or related to the drafting of the amendment, internal consideration of the amendment, the November 8, 2023 meeting, and the vote to reject the amendment.
- All communications from consumers or retailers asserting any injury, risk of injury, or adverse incident associated with weighted infant blankets or swaddles.
- All communications from consumers or retailers asserting any injury, risk of injury, or adverse incident associated with Dreamland's products.
- All communications from December 2, 2021 through present between Commissioner Trumka, or his staff, and any third party related to the safety of wearable infant blankets and swaddles or to Dreamland; such third parties include members of media, retailers, manufacturers, the American Academy of Pediatrics, other state or federal agencies (particularly the Federal Trade Commission, Centers for Disease Control and Prevention, and National Institutes for Health), Members of the U.S. House of Representatives and their staffs (including committee staffs), Members of the U.S. Senate and their staffs (including committee staffs), and even personal contacts. This evidence includes communications via social media, chats, and other forms of technology.
- All documents related to Commissioner Trumka's April 15, 2024 statement discussed above as well as any similar statements, including all documents related to the drafting, circulation, substantiation of claims asserted, responses, media inquiries, and reiterations or revisions of the statement, such as by video or other means.
- All other statements issued by Commissioner Trumka or communications with retailers suggesting that they stop sale of products prior to the issuance of a federal rule.
- Policy manuals, guides, or training materials provided to Commissioners, including Commissioner Trumka, or CPSC staff regarding Section 6(b) of the CPSA.
- All documents related to Commissioner Trumka's, or his staff's, knowledge of, agreement to abide by, or disapproval of Section 6(b) of the CPSA.

- All communications between Commissioner Trumka, or his staff, and retailers, reporters, or persons at other agencies or Congress regarding means of circumventing Section 6(b).
- The current image of any computer or communication device issued by the United States/CPSC to Commissioner Trumka or his staff.

Thank you for your time and attention to this matter.

Very truly yours,



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