



AAFA/FASA/TGA Members:

*****UPDATE*****

COMPLYING WITH CALIFORNIA PROPOSITION 65 LABELING YOUR PRODUCT

This update is brought to you jointly by the American Apparel & Footwear Association (AAFA), the Fashion Accessories Shippers Association (FASA) and the Travel Goods Association (TGA) and is being distributed to the members of all three associations.

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As many of you know, a significant number of lawsuits have been launched over the last few months against dozens of apparel, footwear, fashion accessory and travel goods brands and retailers under a California law known as Proposition 65. The lawsuits allege that products such as handbags, footwear, children's raincoats, clutches, wallets and totes sold by those brands and retailers in California contain lead (and in some cases, phthalates) in excess of the standards set under California Proposition 65. Proposition 65 lawsuits begin with a "Notice of Violation" (otherwise known as a "60-day notice") from the plaintiff. If you receive a "Notice of Violation," please contact your respective association so that we may continue to track Proposition 65 activity affecting our industries.

AAFA, FASA and TGA have been working hard over the last few months to educate their members on California's Proposition 65. This update provides a Proposition 65 FAQ, including a discussion of Proposition 65's warning regulations and three sample Proposition 65 warning labels. We are continuing to produce tools and updates to help our members better understand the regulations and how to comply with them.

Lisa L. Halko, a shareholder in the law firm of Greenberg Traurig LLP, assisted AAFA/FASA/TGA in preparing this Update and the three sample Proposition 65 warning labels. Lisa has litigated many Proposition 65 cases and is a frequent author and speaker on Proposition 65 and other consumer product laws affecting the travel goods and fashion industries.

Lisa's contact information is below:

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Since neither AAFA, FASA nor TGA can provide legal advice, you should rely on your own legal counsel to determine how best to comply with Proposition 65.

As outlined below, product labeling presents one option to comply with California Proposition 65.

Please contact FASA's Nate Herman at 703-797-9062 or nherman@geminishippers.com if you have any questions or would like additional information.

What is California Proposition 65?

Proposition 65 (Prop 65) is a California law that was approved by California voters in a referendum in 1986. It requires the state to keep a list of chemicals that cause cancer or reproductive toxicity. If a product contains a chemical on the list, businesses are required to provide a "reasonable warning" before exposing Californians to the chemicals. The list of chemicals and metals covered by Prop 65 now exceeds 800, and the list continues to grow every year. You can access the list of 800-plus chemicals on the California Office of Environmental Health Hazard Assessment website at http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html. Lead, phthalates, and other common chemicals are on the Proposition 65 list.

Does Proposition 65 apply to my products?

Yes. Unlike the national *Consumer Product Safety Improvement Act* (CPSIA), Proposition 65 **APPLIES TO ALL PRODUCTS**, not just children's products.

But my products comply with all federal laws!

California requires all "persons in the course of doing business" whose products are sold in California to comply with Proposition 65, in addition to federal laws for product safety.

Is there a small-business exemption?

Not really. Although Proposition 65 does not apply to businesses with fewer than 10 employees, retailers expect their suppliers to defend and indemnify them when Proposition 65 allegations arise.

How is Proposition 65 enforced?

Through litigation. Prop 65 allows so-called "citizen enforcers" to enforce the law by seeking injunctions and civil penalties up to \$2500 per violation per day. NGOs, other groups and even private Californian citizens can sue in California courts and collect part of the penalties.

These “citizen enforcers,” with the help of trial lawyers, bring lawsuits in the hope of reaching a settlement with the defendants in the case. In the over 20 years the law has been in place, only a handful of Prop 65 cases have been fully litigated. The vast majority of these cases have been settled out of court. These “citizen enforcers” collected over \$24 million in settlements from Prop 65 cases in 2008 alone, with an average settlement of \$125,000. They are also entitled to their attorney fees –which make up more than 60% of the average Proposition 65 award.

You can find more information on how Prop 65 is enforced on the State of California Attorney General’s website at <http://ag.ca.gov/prop65/index.php>.

For more background information on Prop 65, you can go to the California Office of Environmental Health Hazard Assessment website at <http://www.oehha.ca.gov/prop65.html> or go to a good private resource called <http://www.prop65clearinghouse.com>.

What Are My Options?

With the growing interest in fashion accessories, travel goods, footwear and apparel by Prop 65 litigants in California, many of your customers have begun asking you to comply with Prop 65.

What does this mean? How can your company “comply” with Prop 65?

Perhaps the easiest way to comply would be to no longer sell your product in California. However, vendors cannot control where their products are ultimately sold. If your products could make its way to California –on store shelves or through internet sales-- Proposition 65 affects you.

Another way to comply is to keep all chemicals in your products below the so-called “safe harbour” level that requires a Proposition 65 warning. Unfortunately, those levels are hard to determine. Proposition 65 compliance is based on how much of a chemical the average consumer is *exposed* to, not on how much is in the product. The law requires the defendant to prove that the average consumer is not exposed to more than the allowable amount of the chemical, based on scientific studies such as behavioral and toxicology tests. Proposition 65’s *content* standards are set in litigation that applies to only the litigants in a particular case, not in regulations that apply to everyone. Some settlements set content standards that are even lower than the national *Consumer Product Safety Improvement Act* (CPSIA) standards. For example, a common settlement standard is 200 ppm (parts per million) for lead in vinyl components.

Remember, though, that **Proposition 65 is a warning law, not a ban**. If your product is made from materials that contain traces of Proposition 65 chemicals, you may want to consider placing a warning label on your product that is conspicuous to the consumer at the time of purchase as a possible way to comply with Proposition 65. The warning label, as long as it complies with the regulations under Prop 65, can also protect your company and products if your product contains a chemical that is listed in the future.

For travel goods and fashion accessories, this conspicuous label would likely take the form of a hangtag. For apparel and footwear, this might take the form of a hangtag or sticker, depending on the garment or shoe and depending on how the product is displayed at the store.

Three sample Proposition 65 "warning" labels are attached to this e-mail. Again, Lisa Halko from the law firm of Greenberg Traurig LLP assisted AAFA/FASA/TGA in preparing these labels.

What Is a Proposition 65 Warning?

Proposition 65 requires that a business cannot expose a person to a listed chemical "without first giving clear and reasonable warning." California has enacted regulations describing what a "clear and reasonable warning" is. You can read the regulations for Proposition 65 warnings online at http://www.oehha.ca.gov/prop65/law/pdf_zip/RegsArt6.pdf. With this update, AAFA, FASA and TGA have provided samples of warnings for you and your legal counsel to use in designing a Proposition 65 warning that conforms to the regulations.

The Warning Must Be Conspicuous.

Since the law requires "first giving" a warning, the warning should be visible to the consumer before the exposure occurs. Therefore, you should consider using a hangtag or sticker, rather than a statement placed inside the product or within a handbook.

The Warning Must Be "Clear."

The text of the warning must communicate that the chemical is known to cause cancer, or reproductive harm. The regulation provides safe-harbor "clear" warning language:

WARNING: This product contains chemicals known to the state of California to cause cancer, or birth defects or other reproductive harm.

You should not change this language to say that the product "may" contain chemicals, or that the chemicals "may" cause cancer. **That would take the warning language outside the safe-harbor regulation.**

Note – Labels would likely appear on all of your product, regardless of whether the product was ultimately sold in California. That means your product could contain the above warning whether sold in Ohio or California.

The Warning Must Be "Reasonable."

The warning must be conspicuous enough that a consumer would probably see it before the exposure. If it appears on a label with other warnings, it must be no smaller than the other warnings. The other language should not contradict the warning language. Further, any language included in the warning, elsewhere on the warning label and/or elsewhere on the product that somehow "softens" the warning will likely be determined to fall outside the safe harbor and might increase your risk of litigation.

Again, based on this criteria, three sample Proposition 65 “warning” labels are attached to this e-mail. Lisa Halko from the law firm of Greenberg Traurig LLP assisted AAFA/FASA/TGA in preparing these labels.

ATTACHMENTS

- Sample Labels – 3 samples

DISCLAIMER

This document (hereby referred to as “the Prop 65 update”) is provided by AAFA, FASA and TGA for informational purposes only. AAFA, FASA and TGA assume no responsibility to update the above information or to keep it current, but the information is subject to change. The Prop 65 update represents the understanding of AAFA, FASA and TGA at the time of publication; any inaccuracy or omission is not the responsibility of AAFA, FASA or TGA.

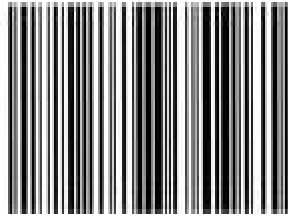
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***** DRAFT *****

Orange Rolling Luggage



ORANGE ROLLING LUGGAGE
3151 K ST. NW
WASHINGTON, D.C. 20007
MADE IN CHINA

FRONT



Orange Rolling Luggage

Three Year Limited Warranty: This product by Orange Rolling Luggage is guaranteed to the original user for three years against manufacturing defect. If defective, this bag will be repaired or replaced without charge at the option of Orange Rolling Luggage. Please note that our warranty does not cover accidental damage, unreasonable use, normal wear and tear or damage due to abusive handling. In particular, it is the responsibility of the user of the luggage damaged by a public carrier to file a claim with the carrier concerned at the time of damage. Original proof of purchase required.

California Proposition 65 Warning:

Warning: This Product Contains Chemicals Known To The State of California To Cause Cancer, or Birth Defects or Other Reproductive Harm.

This product complies with all state and federal product safety standards.

BACK



GREEN HANDBAGS

FRONT

GREEN HANDBAGS

Guarantee: We guarantee that our products are made with sustainable processes.



California Proposition 65 warning:

Warning: This product Contains Chemicals Known To The State of California To Cause Cancer, or Birth Defects or Other Reproductive Harm.



MADE IN CHINA

BACK

This product complies with all state and federal product safety standards.

FRONT



BACK

Boardwalk Clothing Company

This product is not a toy. Do not allow children to mouth this product.

Dry clean only.

California Proposition 65 warning:

WARNING: This Product Contains Chemicals Known To The State of California To Cause Cancer, or Birth Defects or Other Reproductive Harm.

This product meets all state and federal safety standards.

Made in China