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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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CHAIRMAN

January 28, 2008

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Mr. H. Ty Warner
Chairman and CEO
Ty, Inc.
PO Box 5377
Oak Brook, IL 60522

Dear Mr. Warner:

In 2007, the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce developed an extensive record on the issue of consumer product safety, especially concerning toys and other products designed for use by children. The Subcommittee produced bipartisan legislation aimed at modernizing the consumer product safety regime in this country. The legislation, H.R. 4040, was unanimously adopted by the U.S. House of Representatives on December 19, 2007, and is pending action in the Senate. Among other things, it would enhance the effectiveness of recalls of unsafe products. The Subcommittee plans to continue to investigate the issue of unsafe consumer products.

According to January 22, 2008, and January 23, 2008, articles in the *Chicago Tribune* (copies attached), Illinois Attorney General Lisa Madigan's office requested that you recall several products due to high levels of lead. As part of the Subcommittee's inquiry, I request that you respond, in detail, to the following questions by February 19, 2008.

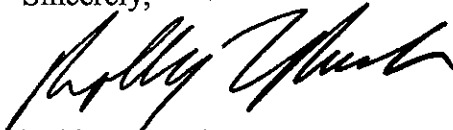
1. According to the January 22, 2008, article, toys distributed by Ty Inc. were found to contain high levels of lead. Please provide the exact lead level discovered in each product and describe the form and location of the lead on the product (paint, content, substrate, etc.). Please explain, in detail, how and when your company became aware of the lead-tainted products and what actions, if any, it took in response to the information.
2. The follow-up article on January 23 indicated that your company claimed to have pulled the lead-tainted toys from distribution in Illinois during the first week of January 2008. Is this information accurate? If so, please provide details about the recall, including dates and descriptions of relevant actions taken by your company. If not, please explain.

3. Are you aware of any other Ty Inc. toys or products intended for use by children that contain levels of lead above 600ppm? If so, please provide details about the products, including how and when you became aware of the lead levels, and what, if any, actions the company has taken in response to the information you have received.
4. Does Ty Inc. distribute any products found with levels of lead that exceed 600ppm in any States other than Illinois? If so, has your company taken any action to remove the items from distribution outside of Illinois? Are the levels of lead contained in the products unlawful in any other States of distribution, and if so, has Ty Inc. taken any corrective action?

Please deliver your written response by close of business on February 19, 2008, to room 2125 Rayburn House Office Building, Washington, D.C. 20515 and fax it to 202-226-5577 to the attention of Ms. Valerie Baron. An electronic version of your response should also be sent by e-mail to Ms. Baron at valerie.baron@mail.house.gov in a single document.

Thank you for your cooperation and attention to this request. I look forward to reviewing your responses. If you have questions or wish to discuss this matter, please contact Judith Bailey with the Committee staff at (202) 225-2927.

Sincerely,



Bobby L. Rush
Chairman
Subcommittee on Commerce, Trade,
and Consumer Protection

cc: The Honorable John D. Dingell, Chairman
Committee on Energy and Commerce

The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Ed Whitfield, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

www.chicagotribune.com/news/local/chi-lead_23jan23,0,2692671.story

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TRIBUNE UPDATE

Ty takes high-lead doll out of stores

Toymaker changes Jammin' Jenna shoes

By Sam Roe

Tribune reporter

January 23, 2008

Facing increasing pressure from authorities, a major toymaker has removed lead-tainted dolls from store shelves across the state, the Illinois attorney general's office said Tuesday.

Ty Inc. said it has replaced its popular Jammin' Jenna dolls with a redesigned version, the state said. Now, the toy's shoes are made of cloth and not vinyl, the part of the product that showed high lead levels.

"While we are pleased with the results, it is unfortunate it took weeks to get them to take these steps," said Cara Smith, deputy chief of staff to Illinois Atty. Gen. Lisa Madigan.

Ty officials could not be reached for comment Tuesday night.

The state and Ty, which is based in Westmont, had been at odds since last fall when testing by the Tribune found that the doll and a variety of other toys sold in the Chicago area contained high levels of lead, a metal that can cause learning delays in children.

A day later, the attorney general's office demanded that retailers and manufacturers cease sales of the tainted toys identified by the newspaper. Most companies complied, Smith said, but Ty agreed only to stop distributing new Jammin' Jennas to retailers. The company refused to pull those dolls still on shelves, Smith said.

Unsatisfied, the state began testing the dolls and considering legal action against the company. The dispute was detailed Tuesday in a Page 1 story in the Tribune.

On Tuesday afternoon, Smith said, a Ty lawyer called the attorney general's office and said that the company had pulled the dolls from shelves the first week in January. Smith said it was unclear why Ty waited until Tuesday to tell the state of this action.

In previous interviews, Ty representatives have said the company is not violating state law because federal rules supersede it. While the state bans vinyl toys that exceed 600 parts per million of lead, federal law does not.

But both the state attorney general's office and the federal Consumer Product Safety Commission have

said that the Illinois ban is valid because states can adopt their own rules where no federal law exists.

Ty's action Tuesday appears to have averted a possible court fight and what would have been the first test of Illinois' strict lead laws.

sroe@tribune.com

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www.chicagotribune.com/news/chi-ap-il-taintedtoys,0,2475549.story

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Ty Inc. fights recall of lead-tainted toys

Associated Press

5:43 AM CST, January 22, 2008

CHICAGO

Ty Inc., in a challenge of Illinois' law governing lead in toys, is refusing to pull a popular, but tainted, doll from store shelves across the state.

Illinois authorities thought they had agreed last December with Ty to have the company voluntarily remove its Jammin' Jenna dolls from retailers because the toys contained high amounts of lead. But an official in the attorney general's office spotted the toy in several stores.

Westmont-based Ty, best known for its Beanie Babies, said it would no longer sell new versions of Jammin' Jenna to Illinois retailers. But it refused to recall dolls already in stores, according to the state.

An option the state is considering is suing Ty to force the company to comply with state law.

"They sell very popular products that children love," Cara Smith, an aide to Attorney General Lisa Madigan, told the Chicago Tribune. "It would be our expectation that they would step up and do what they can to make sure their products don't contain lead."

The state became aware of the lead in Jammin' Jenna dolls after the Tribune tested the red vinyl shoes on three dolls, finding all three exceeded Illinois lead limits.

Smith said that soon after the Tribune published its results on the Jammin' Jenna doll, Ty Inc. told state authorities it would stop distributing that particular Ty Girlz doll in Illinois and remove it from shelves. A few days later, Smith said, she spotted the doll still on sale in stores.

When the state called Ty Inc. for an explanation, Smith said, the company switched positions, saying it would not recall those already on shelves.

Scott Wehrs, Ty's chief operating officer, declined to comment for this article.

Ty Inc. representatives have said the company is not violating state law because federal rules supersede it. While the state bans vinyl toys that exceed the 600 parts per million limit, federal law does not.

But both the state attorney general's office and the federal Consumer Product Safety Commission have said that the Illinois ban is valid because states can adopt their own rules where no federal law exists.

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TRIBUNE UPDATE

Toymaker fights state recall

Ty Inc. refuses Illinois' request to pull lead-tainted doll from stores

By Sam Roe and Ted Gregory

TRIBUNE REPORTERS

January 22, 2008

A photo caption accompanying this story contains corrected material, published Jan. 23, 2008.

In what could trigger the first test of Illinois' strict law against lead in toys, a major toymaker is refusing to pull a popular, but tainted, doll from store shelves across the state.

Illinois authorities thought they had reached an amicable agreement late last year with Ty Inc. to have the company voluntarily remove its Jammin' Jenna dolls from retailers because the toys contained high amounts of lead.

But a few days later, the state attorney general's point person on the issue was surprised to see Jammin' Jenna for sale in a candy store near her office. The next morning, the official spotted another one at a grocery store near her home.

When the attorney general's office confronted Ty, best known for its Beanie Babies, the Westmont-based company said it would no longer sell new versions of Jammin' Jenna to Illinois retailers. But it refused to recall dolls already in stores, according to the state.

One option Illinois authorities are considering: suing Ty to force the company to comply.

The weeks-long fight is just one snag state authorities have encountered while investigating a variety of toys the Tribune identified last fall as containing illegal amounts of lead.

A day after the newspaper released its testing results showing that Jammin' Jenna and 20 other toys sold in the Chicago area had high lead levels, the state attorney general's office opened an inquiry into each one. Authorities wrote letters to the retailers and, if known, the manufacturers, asking that they cease sales.

According to the state, as well as interviews with the companies, 12 toys have been pulled statewide. Nine of those have been withdrawn nationwide. In the case of several other toys, investigators have been unable to determine the manufacturers. So even though individual Chicago stores have told the state they have pulled items from their shelves, it is unknown whether those products are still being sold elsewhere in the city or state.

At least two toy companies have taken additional steps in the wake of the Tribune and state investigations. ALEX toys has overhauled its testing for lead in toys. And Kids II Inc. has replaced lead-tainted material in its Baby Einstein Discover & Play Color Blocks, according to Illinois authorities.

But the state attorney general's office remains at odds with Ganz, a Toronto-based manufacturer, over a heart-shaped ornament that the Tribune found contained high levels of lead. Ganz officials have said the charm is not children's jewelry and therefore not subject to lead-safety rules. The attorney general's office disagrees.

State authorities also are upset at national retailer Party City, which told investigators and the Tribune in the fall that it had stopped selling a pirate skull ring found by the newspaper to contain high lead levels. A spot check by the Tribune later found the ring still for sale.

The newspaper bought and tested the ring again. It exceeded safety limits for lead.

A Party City spokeswoman said the chain had instructed its 500 stores across the country to pull the rings and thought the order had been carried out. The firm said it re-issued the order earlier this month after the Tribune informed the company that the tainted product was still on some shelves.

The retailer also said it has instructed its stores to withdraw a similar pirate necklace, which the Tribune found in a follow-up test contained lead levels more than 200 times the state limit.

Despite its concern with Party City, the attorney general's office said it is most troubled with Ty Inc. over its Jammin' Jenna, one of several dolls in the Ty Girlz product line.

"They sell very popular products that children love. It would be our expectation that they would step up and do what they can to make sure their products don't contain lead," said Cara Smith, deputy chief of staff to Illinois Atty. Gen. Lisa Madigan.

Scott Wehrs, Ty's chief operating officer, declined to comment for this article.

Last fall, the Tribune tested the red vinyl shoes on three Jammin' Jenna dolls, and all three exceeded Illinois lead limits. (The newspaper also tested several other dolls in the Ty Girlz line, but those showed no detectable amounts of lead.)

According to Smith, soon after the Tribune published its results on the Jammin' Jenna doll, Ty Inc. told state authorities it would stop distributing that particular Ty Girlz doll in Illinois and remove it from shelves.

A few days later, Smith said, she was in a candy store in the Thompson Center, where the attorney general has offices, when she spotted one of the Jammin' Jenna dolls for sale. The next morning, while shopping at a Jewel grocery in River Forest, she saw another one. "I thought, 'They're everywhere,'" she recalled.

When the state called Ty Inc. for an explanation, Smith said, the company switched positions, saying it would not recall those already on shelves.

Unsatisfied with that response, Smith's office bought three dolls and tested them for lead. Two of three, she said, showed levels over the Illinois limit of 600 parts per million.

Talks continue between the two sides. Smith said the state could sue Ty Inc. for failing to comply with

the state's stricter lead rules that went into effect in 2006.

In previous interviews, Ty Inc. representatives have said the company is not violating state law because federal rules supersede it. While the state bans vinyl toys that exceed the 600 parts per million limit, federal law does not.

But both the state attorney general's office and the federal Consumer Product Safety Commission have said that the Illinois ban is valid because states can adopt their own rules where no federal law exists. The safety commission is conducting its own investigation into the 21 toys identified by the Tribune; results are expected within a few weeks.

For consumers, the tougher Illinois law might add confusion over which toys are safe. Toymakers, for example, may be required to pull items in Illinois but not in other states.

That is the case with ALEX toys, manufacturer of the "Desk To Go" writing mat and case. The company has stopped shipping the item to Illinois but declined to pull the product nationally because federal law does not require it to do so, said Drew Metz, ALEX's director of product safety.

"There's not that many of these items out there anyway," he said, "and we still feel the product is safe."

Some companies did remove items from shelves nationally after the Tribune's tests.

Inter-American Trading, importers of a ceramic whistle that showed high lead levels after the newspaper bought one at the Field Museum, said it recently recalled the item from retailers nationwide.

"I'm not even offering it to my customers," said Lucia Rizo-Patron Crawford, owner of the Denver-based company. "I don't want to jeopardize my job, my family, my business -- everything -- for this."

Kids II Inc. stopped selling the popular Baby Einstein Discover & Play Color Blocks in Illinois the day after the Tribune investigation revealed the yellow block in the play set contained high amounts of lead, according to the attorney general's office.

The state said the company had promised to now make all yellow blocks distributed nationwide with satin as opposed to vinyl, the part that had tested positive for lead. Kids II did not respond to requests seeking comment.

And even though ALEX has withdrawn its Desk To Go writing mat from shelves only in Illinois, Metz said the company is now "changing everything" in its lead testing of all its products. Those changes began, he said, after the first large-scale toy recalls occurred last summer and were stepped up after the Tribune informed the company of the test results.

ALEX, which sells products in 70 countries, said it is checking materials for lead before or during production, then examining the products again once they arrive in the U.S. ALEX also is checking products already in the company's inventory.

"We've changed our procedures," Metz said. "That way, we don't have any issues at all."

IN THE WEB EDITION: See list of tainted toys

Interactive graphic outlines Tribune's findings. chicagotribune.com/lead

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