

Log of Meeting

SUBJECT: Consumer Recall Notification Initiative

Date of Meeting: December 10, 2001

Log Entry Source: Alan H. Schoem, Director, Office of Compliance

Date of Log Entry: December 18, 2001

Location: CPSC Headquarters

CPSC Attendees:

Commissioner Mary Sheila Gall
Alan H. Schoem
Eric Stone
Michael Gidding
Marc Schoem
Patricia Fairall
Dennis Wilson
Michael Gougisha

Non CPSC Attendees:

Retail Store Trade Associations, individual retail stores, credit card companies, credit bureaus, Federal Trade Commission, testing laboratories (See attached attendance list).

Summary of Meeting: (Videotape of the meeting is on file in the CPSC's Office of the Secretary 301-504-0800 x 1232)

Alan H. Schoem welcomed everyone to the meeting. He made a few remarks about the purpose of the meeting—to receive a report from a task force exploring the use of electronic data bases, specifically credit card information, to identify purchasers of recalled products.

Kathleen McCarthy, Esq. With Williams-Sonoma gave a report (see below) on the results of numerous conference call meetings held by her task force. Generally, she reported that the participants in the conference calls believes a central data base is not a viable option. The credit bureaus believe that under the law, if they are provided with a list of credit card numbers, they can release information that identifies the consumer to a governmental agency, such as the CPSC. They believe they cannot provide this information to a retailer or a manufacturer. Thus, the task force concluded, CPSC participation in the process is crucial and CPSC must be willing to participate. The FTC

staff expressed the view that CPSC could contract with a third party to mail recall notice to consumers identified by the credit bureaus.

With respect to retailers, there are a number of challenges. Can retailers provide credit card numbers to credit bureaus, what are retailers responsibility under various statutes.

The task force also believes CPSC should work with an independent human factors firm to analyze why consumers respond to some recalls and not to others and how recall notification can be made more effective. They also expressed a desire for a “National Recall Registry” linking existing CPSC, FDA and NHTSA sites.

During the open discussion, representatives of retail trade associations expressed the view that there is no universally applicable format or system to support linking SKUs to credit cards. Further, there were issues with storage capacity and cost.

CPSC staff stated it would continue to explore the use of electronic databases to enhance the effectiveness of recalls.

Recall Notification Effectiveness Initiative
Task Force Progress Report

Monday, December 10, 2001

ATTENDEES


Bill Kneendorf	Safety Alerts
Anne Fortney	Associated Credit Bureau
Mallory Duncan	National Retail Federation
Sarah Whitaker	National Retail Federation
Laura Berger	FTC
Bill Haynes	FTC
Claudia Simons	FTC
Barbara Parisi	Thompson Hine
Tanya Chin Ross	Safe Kids
Wayne Morris	AHAM
John Whalen	BNA
Joan Murphy	PSL
Walt Sanders	Sanders & Associates
Jim Conway	DMA
Mo Cain	IMRA
Gordon Gillerman	UL
Kathleen McCarthy	Williams-Sonoma
Ray Messina	Discover Card
William Binzel	Mastercard International
Patty Adam	ATMI
Grafton Gayle	GSG
Alan Schoem	CPSC
Marc Schoem	CPSC
Mike Gidding	CPSC
Pat Fairall	CPSC
Jonathan Midgett	CPSC / Human Factors

*RECALL NOTIFICATION
EFFECTIVENESS
COMMITTEE*



Report to CPSC
December 10, 2001

COMMITTEE GOAL



To evaluate how retailers and manufacturers can utilize electronic consumer databases to communicate recall information to consumers

Committee Activities



- Committee Participants - Retailers, Manufacturers, Trade Associations, Credit Bureaus, Entrepreneurs
- 6 Group Conference Calls
- (2 Retailer only - others open to all)
- Regular status re-caps

Issues Examined



- Central Database Concept
- Credit Bureau Databases
- Privacy Laws
- Other Electronic Resources

FINDINGS



1) “CENTRAL DATABASE”

NOT a viable option

- Privacy
- Security

FINDINGS

- **2) CREDIT BUREAU DATABASES**
- Conclusion: If provided with a list of credit card numbers, the credit bureaus can release identifying information to a governmental agency, such as CPSC, pursuant to FCRA 608.

Legalities - FCRA & GLB



- Credit Bureau activities fall under jurisdiction of the FCRA
- GLB applicable to retailers, not Credit Bureaus

FCRA



- Credit Bureaus cannot “reverse append”
- Current Federal case law holds that a Credit Bureau creates a “consumer report” under FCRA when it provides consumer identifying information to a retailer who has submitted a credit card number

FCRA



- No “Safe Harbor”
- No FTC Rulings
- FTC lacks regulatory powers to carve out an exception to reverse append this in the event of a recall

FCRA



- EXCEPTION- FCRA Section 608
- Allows a Credit Bureau to extract the identifying information
- Allows a government agency to receive the identifying information for a specific purpose
- Does not allow release back to retailer or to a third party



FCRA

CONCLUSION

In connection with a recall, the Credit Bureaus can release consumer identifying information to the CPSC

CPSC PARTICIPATION



Since Credit Bureaus can only release
identifying information to a
governmental agency-
CPSC participation is crucial

CPSC ISSUES



- Is CPSC willing/able to accept customer identifying information from Credit Bureaus?
- Is CPSC willing to accept responsibility for contacting the consumers?

CPSC LEGAL ISSUES



- Under the FCRA exception, what can CPSC do with the information?
- Can CPSC release the consumer identifying information to a 3rd party to contact consumers?
- If so, what safeguards must be utilized?

RETAILER CHALLENGES



- No one size fits all solution for all retailers
 - Size
 - System
 - Record retention
 - Volume
 - Form of Payment


Retailer Legal Issues

- Can Retailer provide credit card numbers to Credit Bureaus?
- Are they a Financial Institution under GLB?
- Will this trigger a notification requirement?
- Will every customer using a credit card need to be informed of this use and given an opportunity to opt out?

*UNDERSTANDING
EFFECTIVE RECALL
NOTIFICATION*



The Nagging Question

- 
- Why do consumers respond to some recalls and not others?
 - What is the most effective means of communicating recall information?
 - What will capture the consumer's attention?
 - Is there a risk of over notification?

Recommendation



- CPSC should work with an independent human factors firm to analyze why consumers respond to some recall notifications and ignore or choose not to act on others.

Existing Resources



- NATIONAL RECALL REGISTRY
- Link existing CPSC, FDA, NHTSA sites
- Allow consumers to register for notification of recalls by product, product category or manufacturer

National Recall Registry

BENEFITS

- CPSC site already exists and is a fantastic resource
- Would allow for e-mail notification
- Would educate consumers
- Would generate media coverage and publicity

CONCLUSIONS



- Central Database Concept not viable
- Using Credit Bureau Databases may work, but will require CPSC ownership
- Need to understand Consumer Behavior
- Existing CPSC site may offer best short term electronic database solution