



November 11, 2024

VIA EMAIL AND FIRST-CLASS MAIL

Alberta E. Mills
Secretary of the Commission
U.S. Consumer Product Safety Commission
Washington, DC 20207
amills@cpsc.gov

Re: Section 6(b)(7) request for retraction by Nested Bean, Inc.

Dear Secretary Mills:

We represent Nested Bean, Inc. (“Nested Bean”), a manufacturer of weighted infant sleep products, regarding the misleading and inaccurate statements made by the Consumer Product Safety Commission (“CPSC”) and Commissioner Richard Trumka. We write today to request that pursuant to the Consumer Product Safety Act (“CPSA”), 15 U.S.C. § 2055(b)(7) and 16 C.F.R. § 1101.52, the CPSC retract and correct the inaccurate and misleading information issued by both Commissioner Trumka and the CPSC that reflects adversely on the safety of Nested Bean’s weighted infant sleep products.

Summary

Nested Bean has an impeccable safety record since its founding in 2011. It has sold over 2.5 million products and has not had a single known incident or CPSC investigation report concluding that any of its products are hazardous. Safety is not just Nested Bean’s top priority, it is everything. Founded by a mother with an engineering background and over a decade developing consumer facing products, Nested Bean was founded with child safety at the forefront. Before being brought to market the products were rigorously researched, designed, and developed for safety. After launching in the market Nested Bean continued to invest in safety testing and scientific research studies as a commitment to infant safety. Nested Bean believes in regulations that raise the bar on safety and protect consumers from unscrupulous manufacturers. Over the years, Nested Bean has actively participated and cooperated with CPSC to create safety standards for wearable infant sleep products. Nested Bean’s safety record speaks for itself.

Yet despite this stellar record, Commissioner Trumka issued numerous statements to the public, major retailers, and on the CPSC website that readily identify Nested Bean. These statements are inaccurate and have misled the public and major retailers into believing that Nested Bean’s products are unsafe. Major retailers stopped selling Nested Bean’s products solely because of Trumka’s statement, but to date continue to sell other companies’ weighted infant sleep products. Nested Bean has suffered devastating financial losses solely because of these gross misstatements and abuse of government power. Commissioner Trumka wielded his title to

destroy Nested Bean without any scientific evidence, without proof of hazard patterns, and without any regulatory authority – and then publicly bragged about it.

The CPSC also made public statements about the class of infant weighted sleep products that are inaccurate and misleading and reflect adversely on the safety of weighted infant sleep products. The CPSC specifically recommends that the public not use weighted infant blankets and swaddles. These statements are baseless, not based on any CPSC authored scientific evidence, research, or studies. There's so little evidence of hazard or research that the CPSC declined to adopt voluntary standards and definitions. In fact, the CPSC has not agreed on a accepted definition of weighted infant sleep products, nor has it adopted voluntary or mandatory standards for them. Despite this, the CPSC issued a public statement implying that all weighted infant sleep products pose a risk.

The CPSC must rectify the inaccurate and misleading statements by both, the CPSC and Commissioner Trumka. Commissioner Trumka's statements readily identify Nested Bean, inaccurately characterize the safety of Nested Bean's products, and obviously mislead major retailers. And, CPSC's Safe Sleep Guidelines recommending against all weighted infant blankets and swaddles, without defining the category of weighted infant sleep products based on physical characteristics and hazard patterns, are inaccurate and misleading and reflect adversely on the safety of infant weighted sleep products.

Because the CPSC was recently asked to retract the exact statements addressed in this letter¹ and wholly rejected that request,^{2 3} we are instead asking the Commission issue statements clarifying Trumka's statements and the Safe Sleep Guidelines on the CPSC website. Therefore, we request that the CPSC issue a statement to clarify and correct Trumka's inaccurate and misleading statements about Nested Bean's weighted infant sleep products in particular. These corrections should clarify that: (1) Trumka's statements regarding "risk of death" and "multiple infant deaths" are not attributed to Nested Bean's products, (2) there has been no recall on Nested Bean's products; (3) the Commission has not issued a stop sale order for Nested Bean's products; (4) there has been no hazard pattern identified with Nested Bean's products; (5) there has been no known incident or CPSC investigation report concluding that any of its products were hazardous; and (6) CPSC has not adopted any voluntary standards, mandatory standards, or definitions for weighted infant products. We also request that the Commission issue a statement and revise the Safe Sleep Guidelines on the CPSC website to: (1) clarify that the CPSC has not adopted any voluntary standards, mandatory standards, or definitions for weighted infant products; (2) identify what types of products are included in the terms "weighted blankets" and "weighted swaddles"; and (3) provide summaries of, and direct links to, the CPSC scientific research demonstrating hazard patterns associated with the weighted products referenced.

About Nested Bean

Nested Bean is a small immigrant minority woman-owned business founded in 2011 by Manasi Gangan, an engineer and a 15 year veteran in the technology industry. The idea for the company's signature infant sleep product was born out of Ms. Gangan's need to find a solution

¹ Dreamland Letter to CPSC, dated July 23, 2024 (Exhibit "1").

² CPSC letter to Dreamland request to retract CPSC statements, dated August 30, 2024 (Exhibit "2").

³ CPSC Response to Dreamland request to retract Trumka statements ("Exhibit "3").

to her baby's sleep challenges and was inspired by how babies are calmed by the gentle, reassuring touch of a parent. Ms. Gangan turned her expertise for innovation and problem-solving to helping parents struggling with their baby's sleep, who may resort to make-shift solutions.

Ms. Gangan was inspired by neonatal units in hospitals that were utilizing positional aids with polypropylene filling to simulate the familiar pressure experienced in the womb or from parental touch, mimicking the touch or cradling of a caregiver's hand. Encouraged by a neonatal research study on the soothing effects of simulated touch,⁴ Ms. Gangan embarked on a mission to create a solution that would provide restful sleep for both little ones and their parents. Ms. Gangan began her efforts to develop a line of sleepwear that is designed to mimic the gentle touch of a parent to help soothe babies to sleep.

Her experience in product development and risk assessment guided her cautious approach to the design and development of the new innovative sleepwear. She followed the International Organization for Standardization ("ISO") for consumer product safety, ISO 10377,⁵ guidance that safety is "freedom from unacceptable risk"⁶ and the CPSC recommendations for best practices that the product "not only meets or exceeds the requirements of federal safety laws, but also is designed and manufactured as safely as possible."⁷ She sought advice from sleep safety experts and safety labs to ensure that safety was front and center throughout the design, development, and production phases. Nested Bean shared early designs and prototypes with accredited safety labs for a design evaluation.⁸ Based on the safety labs evaluation and recommendations received during the design and development phase, Nested Bean made critical design changes. Nested Bean updated the prototype and then shared it with Human Factor Design experts to receive safety evaluation in case of rebreathing through the parts containing filling.⁹ Nested Bean then adopted the experts' safety recommendations. Nested Bean also consulted with an accredited safety lab to receive a comprehensive report of mandatory, and a few voluntary, safety test recommendations using international test methods from major global territories such as the United States, Canada, Europe, China and Japan. Materials chosen throughout the supply chain underwent applicable mandatory testing, as well as additional voluntary testing. Nested Bean then consulted with safety experts to define the warnings to be added to product labels. All of these safety measures in the design, development, and production were done in 2011-2012 before a single product went to market.

Nested Bean listens to, supports, and provides valuable insights to parents while advocating safe sleep best practices. The company has earned widespread acclaim from parents,

⁴ The effect of such products was tested in a clinical trial at the Medical Center of Central Georgia, in conjunction with the Georgia Southern University and the Georgia College and State University. Kendra Russell, Barbara Weaver, & Robert Vogel, *Neuroprotective Core Measure 2: Partnering with Families - Effects of a Weighted Maternally-Scented Parental Simulation Device on Premature Infants in Neonatal Intensive Care 15 Newborn & Infant Nursing Reviews* 97 (2015) (Exhibit "4").

⁵ ISO 10377:2013(E), available at <https://www.iso.org/standards.html>.

⁶ ISO 10377:2013(E), Section 2 (Terms and definitions).

⁷ CPSC Best Practices, available at <https://www.cpsc.gov/business--manufacturing/business-education/business-guidance/BestPractices>.

⁸ Technical Report: Carbon Dioxide Rebreathing Hazard Assessment for Nested Bean Swaddle (2012) (Exhibit "5").

⁹ Technical Report: Human Factors Expert Opinion on Nestled Bean Swaddle (2011) (Exhibit "6").

receiving tens of thousands of positive reviews for its effectiveness in helping their babies sleep, and has actively engaged with the parenting community through social platforms. Nested Bean reviews and analyzes customer comments and anecdotal observations left on its own website, retailers' sites, and the CPSC's publicly searchable consumer database saferproducts.gov to identify possible improvements.

Nested Bean is committed to creating standards and definitions for the class of wearable infant sleep products, including the category of filled infant sleep products, to raise the bar on infant sleep safety and also protect consumers from unscrupulous manufacturers. Numerous manufacturers are selling infant products with heavy filling making them significantly heavier than Nested Bean products, many are not labeled or marketed as "weighted." Over the last few years Nested Bean has actively contributed to the collaborative process with the American Society for Testing and Materials ("ASTM") F15.19, the Wearable Infant Blankets Subcommittee, in working towards developing a voluntary safety standard for wearable infant blankets and swaddles. Nested Bean has dedicated significant resources and supported independent research and consumer studies to bring greater insight to how innovation can be balanced with safety.

Ms. Gangan's unwavering commitment to safety, innovation, and research underpins Nested Bean's success. This is evidenced by the stellar safety record the company has maintained with over 2.5 million products sold. And, there has been no hazard pattern identified with Nested Bean's products, nor injuries or deaths attributed to them.

Even with its amazing safety record, Nested Bean still remains committed to safety and compliance. Nested Bean frequently reviews CPSC regulations that apply to infant clothing and infant sleepwear. To ensure continued safety, Nested Bean commissioned a preliminary study in 2023 to investigate the potential effects of applying incremental weights to an infant's chest while in a supine position.¹⁰ The results of which found that the peripheral oxygen saturation and pulse rate for weights between 0g and 30g were in the same statistical grouping. *Id.* The weight of Nested Bean's products are within this range of weight concentration that shows no hazard pattern.

Also, the CPSC's own review of Nested Bean's product showed no identifiable hazard. In 2023, the Office of Compliance and Field Operations ("Office of Compliance"), the compliance branch of the CPSC, conducted a four-month review of Nested Bean's products to assess the risk of suffocation. After reviewing Nested Bean's products the CPSC staff found no identifiable hazard pattern, so the compliance staff's attorney sent Nested Bean a closing letter stating that no further action was warranted.¹¹

The Applicable Law

The Commission has a responsibility to ensure that information disclosed pertaining to consumer products is accurate and not misleading, and before it discloses information that could adversely reflect on the safety of a product or class of products the Commission must provide

¹⁰ Nested Bean Breathing Safety Baseline Study, March 2023 (Exhibit "7").

¹¹ Office of Compliance Closing Letter, dated April 5, 2023 (Exhibit "8").

notice to the manufacturer. No less than 15 days prior to public disclosure of information, where the identity of the manufacturer is readily ascertainable, the Commission must notify the manufacturer of the product of the information to be disclosed and must provide the manufacturer the opportunity to comment on such information. 15 U.S.C. § 2055(b)(1). A manufacturer is “readily ascertainable,” requiring notice before disclosure, “when a reasonable person receiving the information in the form in which it is to be disclosed and lacking specialized expertise can readily ascertain from the information itself the identity of the manufacturer or private labeler of a particular product.” 16 C.F.R. § 1101.13. Then the CPSC must include in the disclosure any comments or other information provided by the manufacturer in response to the information. 15 U.S.C. § 2055(b)(1). Then before it publicly discloses information “from which the identity of such manufacturer . . . may be readily ascertained,” the Commission must “take reasonable steps to assure” that the disclosure is (1) accurate, (2) fair in the circumstances, and, (3) reasonably related to effectuating the purposes of the Consumer Product Safety Act. *Id.* In other words, if the CPSC, or individual commissioner, is going to disclose to the public information that would enable an average person to easily identify the manufacturer, then the CPSC must provide that manufacturer with notice and opportunity to comment on the proposed disclosure.

If the CPSC is going to disclose to the public information that reflects on the safety of a specific consumer product or a class of consumer products, then the CPSC still has an obligation to make sure that the information is not inaccurate or misleading regardless of whether the identity of the manufacturer is easily identifiable. 15 U.S.C. § 2055(b)(6).

The disclosure responsibilities under the CPSA apply to both the Commission and individual Commissioners. The public disclosure procedure “shall apply whenever information is to be disclosed by the Commission, *any member of the Commission*, or any employee, agent, or representative of the Commission in an official capacity.” 15 U.S.C. § 2055(d)(2) (emphasis added). Likewise a retraction can be requested for statements made by individual commissioners. “Any manufacturer, distributor or retailer of a consumer product or any other person may request a retraction if he/she believes the Commission or *an individual member*, employee, agent, contractor or representative of the Commission has made public disclosure of inaccurate or misleading information, which reflects adversely either on the safety of a product with which the firm deals or on the practices of the firm.” 16 C.F.R. § 1101.52(b) (emphasis added). Then “[i]f the Commission finds that, in the administration of the Act, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product or class of consumer products, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner equivalent to that in which such disclosure was made, take reasonable steps to publish a retraction of such inaccurate or misleading information.” 15 U.S.C. § 2055(b)(7).

CPSC Weighted Sleep Research and Past Proposals

The ASTM F.15.19 subcommittee for wearable infant blankets has not adopted any voluntary standards or definitions. In October 2023, the ASTM F15.19 subcommittee submitted for administrative ballot F1519000223001 regarding Work Item WK81176 – Draft Standard Consumer Safety Specification for Wearable Blankets Intended for Use by Infants and Toddlers

(“Draft Voluntary Standards”).¹² The CPSC staff reviewed the Draft Voluntary Standards and provided feedback to the ASTM F.15.19 subcommittee.¹³ The CPSC staff rejected the suggested performance requirements specific to weighted features “until additional research and testing and evaluation of the safety can be conducted.” *Id.*

The CPSC has not yet promulgated any rules providing mandatory standards and definitions for products that could fall under the marketing category of weighted infant sleep products. On November 8, 2023, the CPSC held a meeting to discuss the Fiscal Year 2024 Operating Plan Decisional and the proposed amendments, including an amendment to pursue drafting a mandatory standard for weighted infant blankets, sleepers, and swaddles.¹⁴ During this meeting Commissioner Trumka proposed an amendment (Amendment 3) to require the CPSC “staff to initiate rulemaking and issue a proposed rule to address risks associated with weighted infant blankets, sleepers, and swaddles and align the Commission’s safe sleep guidance and Centers for Disease Control (CDC) and National Institute of Health (NIH) guidance for weighted products.” *Id.* Commissioner Trumka’s proposed amendment did not pass. *Id.* In discussions about the proposed amendment, multiple Commissioners expressed that a rule could not be promulgated until sufficient research had been conducted by CPSC Staff. *Id.* During this meeting, the CPSC Chairman explained that it was “[his] understanding that [CPSC] staff ha[d] 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.”¹⁵ The Chairman went on to explain that “the staff is very aware of the issue and working diligently to assess and quantify safety risks associated with weighted blankets.” *Id.* Commissioner agreed that rulemaking “at this time [was] premature.” *Id.* at 21:52 – 22:05. The Commission rejected Trumka’s proposed amendment by a 3-1 vote.

On November 16, 2023, the CPSC staff cast a negative vote against the F15.19(23-03) draft standard because it lacked specification about maximum weight limits for weighted wearable infant sleep products.¹⁶ In writing again to the ASTM F15.19 subcommittee regarding the Draft Voluntary Standard, the CPSC staff identified concerns sufficient to warrant voting against adoption of the proposed safety standard, it was that it did not have an “accompanying specification of maximum weight limits by age.” *Id.* Staff noted the “lack of publicly available research relating to the issue at hand,” and thus undertook a “market scan of non-weighted wearable blankets and swaddles as well as a range of products marketed as ‘weighted’ and ma[d]e comparisons between the two groups.” *Id.* The “staff [] collected and measured a variety of wearable blankets and swaddles marketed as weighted (“weighted”) and a variety of those products without any such marketing (“non-weighted”) currently sold on the market.” *Id.* The staff found differences in the weight concentration, some products distribute the weight

¹² ASTM F15.19 administrative ballot F1519000223001 regarding Work Item WK81176 – Draft Standard Consumer Safety Specification for Wearable Blankets Intended for Use by Infants and Toddlers (Exhibit “9”).

¹³ Letter from Khalisa Phillips, CPSC Div. of Human Factors, to Subcommittee Co-Chairs for ASTM F15.19 dated October 2, 2023 (Exhibit “10”).

¹⁴ CPSC Meeting Minutes, November 8, 2023, available at <https://www.cpsc.gov/s3fs-public/Comm-Mtg-Min-FY-2024-Operating-Plan-Decisional.pdf?VersionId=GDwWSUy29P7SN9MpqVVWdX5Nn9xe36Vm>.

¹⁵ CPSC, Commission Meeting FY24 Operating Plan Decisional 20:28–20:55 (Nov. 9, 2023), https://www.youtube.com/watch?v=LHemOpZZBN0&list=PLPbI8bR243fHmCYA1a7pZ4I4wzhYjla_V.

¹⁶ Letter from Khalisa Phillips, CPSC Div. of Human Factors, to Subcommittee Co-Chairs for ASTM F15.19, dated November 16, 2023 (Exhibit “11”).

throughout the product while others concentrate it in a specific area. *Id.* The staff also observed that there was a number of products that did not market themselves as weighted but were in fact weighed as much as some of products marketed as weighted and were heavier than other products marketed as weighted. *Id.* Therefore, the “CPSC staff recommend[ed that] the Subcommittee consider establishing weight concentration limits given existing scientific research, the differentiation CPSC staff observed, and NIH and CDC concerns about weighted blankets not being safe for infants.” *Id.* (citations omitted).

CPSC Safe Sleep Guidelines

Sometime after the CPSC Operating Plan Decisional Meeting held on November 8, 2023,¹⁷ the CPSC’s website modified the Safe Sleep Guidelines to recommend that the public not use an entire class of consumer products, weighted infant blankets and swaddles.¹⁸ In these guidelines, the CPSC states “Don’t use weighted blankets or weighted swaddles.” Then with a footnote the CPSC deflects responsibility by asserting that statement is made with the caveat that “*This guidance is based on information from the Centers for Disease Control and the National Institutes for Health.” *Id.* In other words, the CPSC admits that it has not conducted its own research into the safety of these products. The notice on the website read as follows:

DON’T:

- **Don’t add pillows or blankets** to your baby’s sleep space.
- **Don’t use weighted blankets or weighted swaddles*.**
- **Don’t leave your baby unsupervised in products that aren’t designed for safe sleeping.** Inclined products with an angle greater than 10° -such as a rockers, gliders, soothers, and swings- *should never be used for infant sleep.*

*This guidance is based on information from the Centers for Disease Control and the National Institutes for Health. Please go to [CDC.gov](https://www.cdc.gov) and [NIH.gov](https://www.nih.gov) for more information.

Id.

The information by the CDC and NIH only adds further confusion. The CDC and NIH associate hazards of “weighted” products to suffocation and overheating, similar to those posed by soft surfaces, which would include any wearable sleep products containing soft filling. As filled wearable sleep products have not been impacted by Commissioner Trumka’s letters to retailers, it substantiates our argument that the statements on the CPSC website and Commissioner Trumka’s letters that echo them are “misleading” at the very least. Suffocation and Overheating hazards noted on the CDC and NIH website are being adequately addressed by the draft standard. Weighted and filled sleep products are a part of this draft standard and therefore the statements on the CPSC website without context, scope or definition are incomplete, overwhelmingly inadequate and therefore “misleading.”

¹⁷ At the Commission’s November 8, 2023 meeting to consider its Fiscal Year (FY) 2024 Operating Plan Chair Hoehn-Saric noted that “[CPSC] staff is already working on how to modify safe sleep guidance to account for the fact that both NIH and CDC is warning against the use of ... weighted wearables for infants” and that CPSC would be updating its guidance. CPSC Meeting Minutes, November 8, 2023, available at <https://www.cpsc.gov/s3fs-public/Comm-Mtg-Min-FY-2024-Operating-Plan-Decisional.pdf?VersionId=GdWWSUy29P7SN9MpqVWwDX5Nn9xe36Vm>.

¹⁸ CPSC Safe Sleep Guidelines, available at <https://www.cpsc.gov/SafeSleep>.

Statements of Commissioner Trumka on behalf of CPSC

1. January 26, 2024 statement

On January 26, 2024, Commissioner Trumka used his official X account and posted on X¹⁹ (formerly Twitter), linking to a *Washington Post* article that named Nested Bean in its second sentence.²⁰ Commissioner Trumka’s post claimed that CPSC is “in agreement” with the CDC, NIH, and the American Academy of Pediatrics that weighted infant sleep products “pose serious threats to the lives of babies,” and instructed the public: “Do NOT use them for sleep.” *Id.*



Screenshot of Trumka’s January 26, 2024 statement. *Id.*

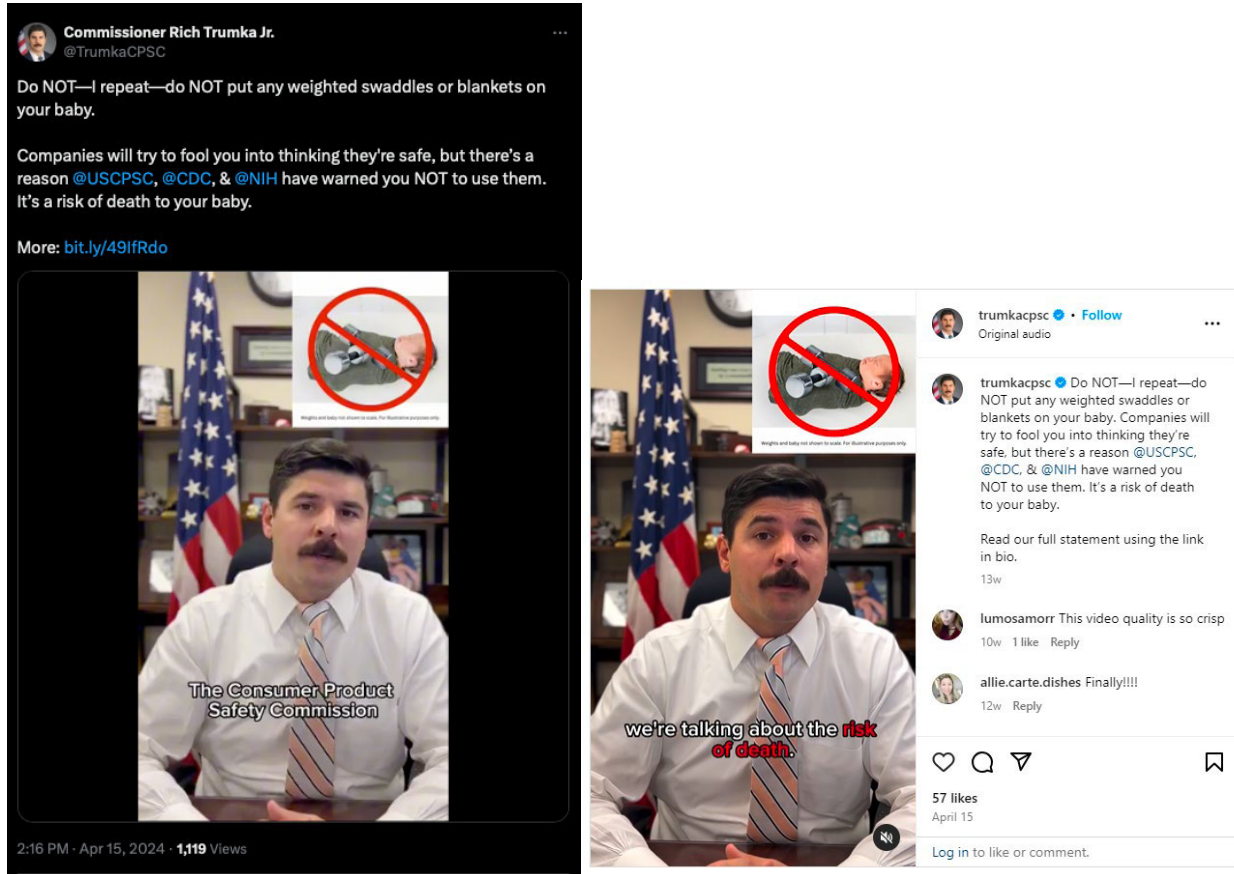
2. April 15, 2024 statements

¹⁹ Commissioner Rich Trumka, Jr. @TrumkaCPSC, X.com (Jan. 26, 2024 at 11:00 AM), <https://x.com/TrumkaCPSC/status/1750926680267333669>

²⁰ Lauren Kirchner, *Weighted blankets are dangerous for babies, doctors warn*, Washington Post, January 22, 2024, <https://www.washingtonpost.com/wellness/2024/01/22/weighted-baby-blankets-unsafe/>

On April 15, 2024, Commissioner Trumka sent identical letters on his official letterhead to seven major retailers, including: Target,²¹ Walmart,²² Nordstrom,²³ and Babylist²⁴ (collectively “Stop Sale Letters”).

On the same day, Commissioner Trumka posted a video on X²⁵ and Instagram²⁶ with a caption stating “Do NOT – I repeat – do NOT put any weighted swaddles or blankets on your baby. Companies will try to fool you into thinking they’re safe, but there’s a reason @USCPSC, @CDC, & @NIH have warned you NOT to use them. It’s a risk of death to your baby.” *Id.*



Screenshot of @TrumkaCPSC, X.com (Apr. 15, 2024 at 3:16 PM) and Screenshot of @TrumkaCPSC, Instagram.com (Apr. 15, 2024). *Id.* In the videos Trumka states:

It seems like a new baby product comes on the market every day. Some new ones that you need to watch out for are *weighted infant swaddles and blankets*. Weighted

²¹ Comm. Trumka Letter to Target, dated April 15, 2024 (Exhibit “12”).

²² Comm. Trumka Letter to Walmart, dated April 15, 2024 (Exhibit “13”).

²³ Comm. Trumka Letter to Nordstrom, dated April 15, 2024 (Exhibit “14”).

²⁴ Comm. Trumka Letter to Babylist, dated April 15, 2024 (Exhibit “15”).

²⁵ @TrumkaCPSC, X.com (Apr. 15, 2024 at 3:16 PM), <https://x.com/TrumkaCPSC/status/1779951952559751190>.

²⁶ @trumkacpsc, Instagram.com (Apr. 15, 2024), https://www.instagram.com/trumkacpsc/reel/C5y1uX_RNso/.

blankets for adults are one thing, but they have no place in infant sleep. The Consumer Product Safety Commission just updated our safe sleep guidance to warn you NOT to use these products with your babies. This brings us in line with NIH and CDC which warns that *weighted products are unsafe for infants*. And when unsafe comes up in the infant sleep space, let's be clear we're talking about the *risk of death*. You can find our safe sleep guidance at [cpsc.gov/safesleep](https://www.cpsc.gov/safesleep). It has great information on what to do and what not to do.

Id. (emphasis added).

That same day April 15, 2024, CPSC posted a statement from Trumka on its website entitled: *Beware: Weighted Infant Swaddles and Blankets are Unsafe for Sleep; Retailers Should Consider Stopping Sales*.²⁷ The statement purported to speak on behalf of CPSC stating that “CPSC has a clear warning for safe infant sleep: **Don’t** use weighted blankets or weighted swaddles for your babies.” *Id.* The statement also alleges without any citation to proof that “There are multiple infant deaths in these products.” *Id.* And it told retailers with that “we do not have to wait for a federal rule,” and that they have “the power to stop sales” and “take precautions today.” *Id.* The CPSC statement page also contains a link to Commissioner Trumka’s April 15 statement video on X, as mentioned above.²⁸ This statement was published on CPSC’s official website and Commissioner Trumka signed his statement “Your consumer advocate at the Consumer Product Safety Commission.” *Id.*

3. April 26, 2024 statements

On April 26, 2024, Commissioner Trumka made another statement on the CPSC website,²⁹ X,³⁰ and Instagram³¹ gloating about the harm he was able to do to Nested Bean’s business while skirting procedural requirements. The statement reads, in part, “On April 15, 2024, I wrote to major U.S. retailers informing them of the hazards weighted infant swaddles and blankets pose to babies, and asking them to consider whether they want to continue selling such products. I am pleased to announce that Target, Walmart, Nordstrom, and Babylist quickly responded by sharing that they will cease sales of weighted infant products” and “I expect to hear back from additional retailers soon.” *Id.*

²⁷ Comm’r Trumka, *Beware: Weighted Infant Swaddles and Blankets Are Unsafe for Sleep; Retailers Should Consider Stopping Sales* (Apr. 15, 2024), available at <https://www.cpsc.gov/About-CPSC/Commissioner/Richard-Trumka/Statement/Beware-Weighted-Infant-Swaddles-and-Blankets-Are-Unsafe-for-Sleep-Retailers-Should-Consider-Stopping-Sales> (Exhibit “16”).

²⁸ <https://www.cpsc.gov/About-CPSC/Commissioner/Richard-Trumka/Statement/Beware-Weighted-Infant-Swaddles-and-Blankets-Are-Unsafe-for-Sleep-Retailers-Should-Consider-Stopping-Sales>.

²⁹ Trumka Statement, April 26, 2024, available at https://www.cpsc.gov/About-CPSC/Commissioner/Richard-Trumka/Statement/Target-Walmart-Nordstrom-and-Babylist-Commit-to-Stop-Selling-Weighted-Infant-Products#_ftnref1 (Exhibit “17”).

³⁰ @TrumkaCPSC, X.com (Apr. 26, 2024 at 10:26 AM), <https://x.com/TrumkaCPSC/status/1783865218226852073>.

³¹ @trumkacpsc, Instagram.com (Apr. 26, 2024) https://www.instagram.com/reel/C6O19phuVEa/?utm_source=ig_web_copy_link.

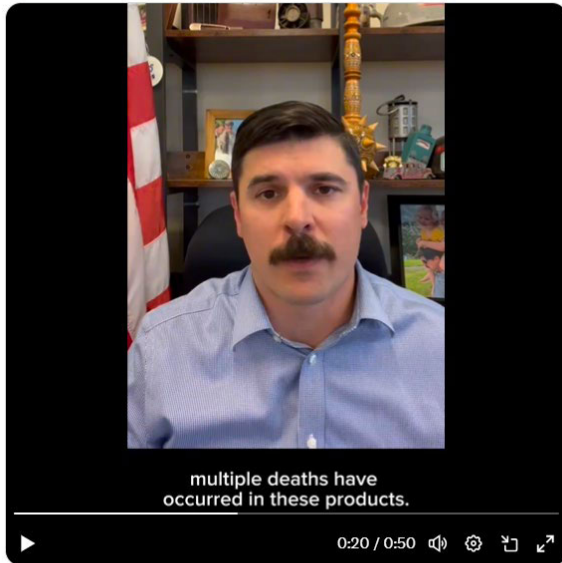
← Post



Commissioner Rich Trumka Jr.
@TrumkaCPSC

After receiving my letters, @Target, @Nordstrom, @Walmart and @Babylist have agreed to discontinue the sale of weighted infant sleep sacks to keep babies safe! 🙌 This action could save lives, and I'm grateful for their cooperation.

Full statement: bit.ly/44jz2Jw



10:26 AM · Apr 26, 2024 · 2,105 Views

1 comment 5 retweets 14 likes



Screenshot of @TrumkaCPSC, X.com (Apr. 26, 2024 at 10:26 AM) and Screenshot of @TrumkaCPSC, Instagram.com (Apr. 26, 2024). *Id.* In this video Trumka states:

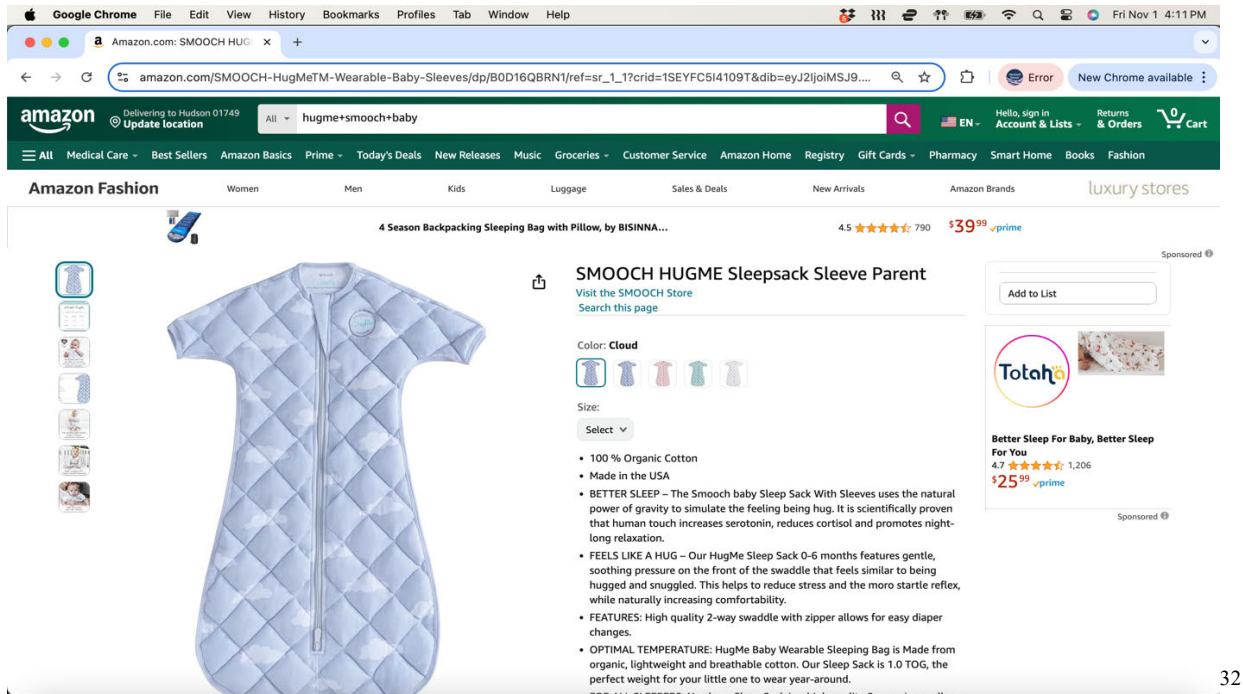
I have some great news to report. Last week, I wrote to major U.S. retailers and I wanted to talk to them about a product category that I'm concerned about: Weighted infant blankets and swaddles. I wanted to let them know that CPSC, CDC, NIH, and the American Academy of Pediatrics have all warned against their use and that multiple deaths have occurred in these products. Armed with this information, multiple major U.S. retailers decided to stop selling these products out of an abundance of caution and a mind toward safety. And I wanted to take time to commend those companies. Target, Walmart, Nordstrom, Amazon, and Babylist all made the decision to pull sales of these products. I have letters out to other retailers as well; I haven't heard back from them quite yet. I'm gonna report to you when I do. Stay safe.

Id.

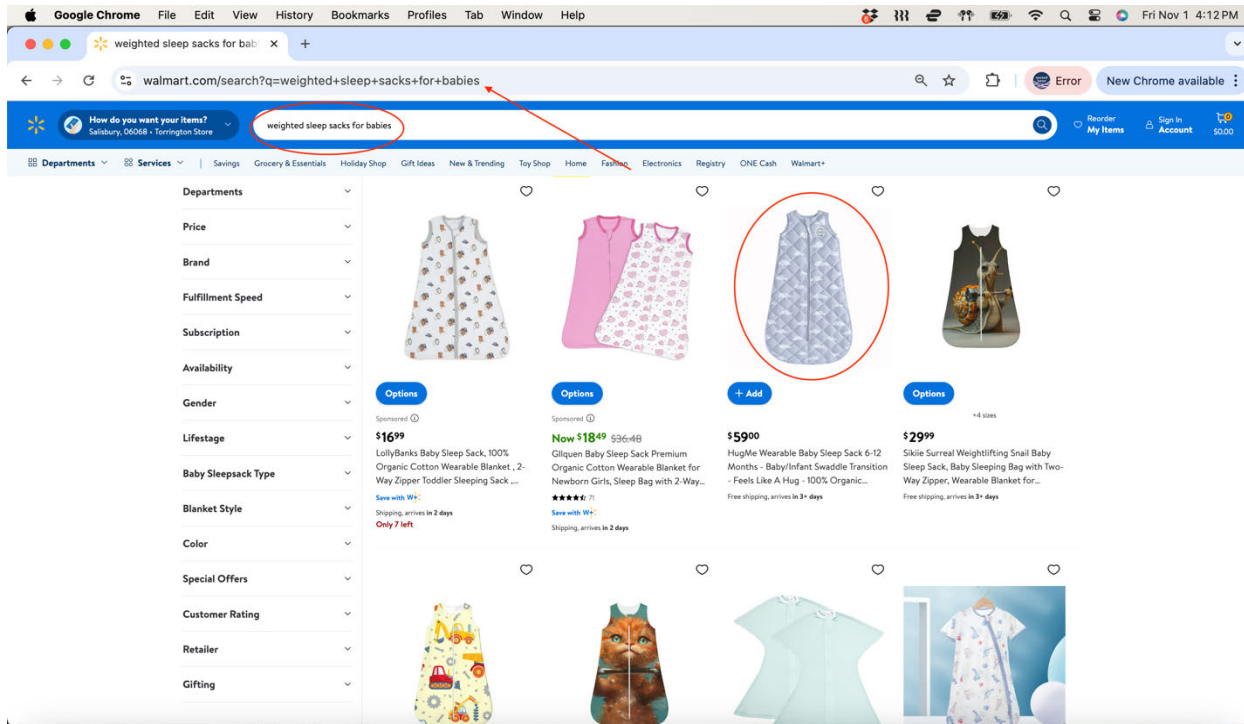
Responses to Statements of Commissioner Trumka and the Commission

In reaction to Commissioner Trumka's statements and letters to retailers, Target, Amazon, and other major retailers stopped sales of Nested Bean's products. Most of these

retailers kept other brands of weighted infant sleep products that were not mentioned in Trumka's letters available for sale on their platforms.



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³²https://www.amazon.com/s?k=weighted+sleep+sacks+for+babies&crd=D6DPZSGPIAFQ&srefix=weighted+sleep+sacks+for+%2Caps%2C128&ref=nb_sb_ss_ts-doa-p_1_24.

³³<https://www.walmart.com/search?q=weighted+sleep+sacks+for+babies>.

Amazon stopped sales of Nested Bean's products and notified customers who had purchased Nested Bean products in the past 12 months that CPSC had "warned that these products should not be considered safe for use by children and babies."

----- Forwarded message -----
From: Amazon Product Safety Team <order-update@amazon.com>
Date: Tue, Apr 23, 2024 at 10:39AM
Subject: Attention: Important safety notice about your past Amazon order
To: [REDACTED]



Dear Amazon Customer,

Our records indicate that you purchased a weighted infant sleep product from us in the last 12 months.

Affected Product: B09JKYSDJG - Nested Bean Zen One | Infant Swaddle | Babies 0-3M (7-13 Lbs) | Adapts for Arms in/Out | Prevents Startles | Aids Self-Regulation | 2-Way Zipper | TOG 1.0 | Machine Washable
Order ID: 114-3029808-5010654

The American Academy of Pediatrics (AAP) and Consumer Protection and Safety Commission (CPSC) have warned that these products should not be considered safe for use by children and babies. You can find more information on safe infant sleep in this CPSC alert: <https://www.cpsc.gov/SafeSleep>.

If you still have any of these products, we recommend you stop using these products for children and infants under three years old. If you purchased this item for someone

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As a result, Nested Bean has experienced an 80% reduction in sales, forcing the layoff of 93% of its workforce. This devastating decline has ruined Nested Bean's relationship with leading retail partners, is risking the company's future and ability to bring effective products to help its customers, which risks its ability to participate in the ASTM standards creation as a knowledgeable manufacturer to benefit the industry as a whole.

On January 22, 2024, Commissioner Trumka sent Nested Bean a letter requesting that it provide information about its product, quality control, safety research, health incidents, and safety messaging compliance by February 5, 2024.³⁵ But before Nested Bean could respond, and only four days after sending the letter, Trumka posted an article on social media that explicitly names Nested Bean, as discussed above. On February 16, 2024, Nested Bean provided responses to Commissioners Trumka, Hoehn-Saric, Boyle, and Feldman explaining Nested Bean's safety record, research into the product development, and involvement in the ASTM voluntary standards process.³⁶

On May 22, 2024, Nested Bean wrote to Commissioner Trumka, to ask him to correct the record regarding his attacks on the company by issuing an immediate retraction of his inaccurate and misleading statements.³⁷ On July 22, 2024, Commissioner Trumka responded by refusing to retract his statements by falsely claiming that they were his personal statements, even though

³⁴ Portion of email from Amazon to customer, dated April 23, 2024.

³⁵ Comm. Trumka Letter to Nested Bean, dated January 22, 2024 (Exhibit "18").

³⁶ Nested Bean Response Letter to Comm. Trumka, dated February 16, 2024 (Exhibit "19").

³⁷ Nested Bean 1st Retraction Letter, dated May 22, 2024 (Exhibit "20").

they were made from his official letterhead and on his official social media account, and posted to the CPSC website.³⁸ And he tried to shirk his statutory responsibilities by relying on the equally unsupported statements of other health agencies that are *not* tasked with product safety and claimed that he merely echoed the warnings of CPSC in his personal statements. *Id.*

This wasn't the first time that Commissioner Trumka has abused his power. On July 25, 2024, the Chairman of the House Committee on Small Business announced that it was launching an investigation into Trumka's unilateral actions and abuse of power, specifically pertaining to the very actions that Nested Bean is complaining about.³⁹ This investigation is a result of a pattern of exceeding his regulatory authority by repeatedly going rogue and issuing public statements about a product under the guise of CPSC authority.⁴⁰ For example, in January of 2023, Trumka made public statements that the CPSC intended to ban gas stoves.⁴¹ The gas stove debacle was very similar to this situation in that the CPSC had *declined* to adopt Trumka's proposed standards for gas stoves – yet, without any CPSC authority, he publicly stated that the CPSC was going to ban gas stoves.⁴² This statement was so inaccurate and misleading that the Chairman for the CPSC was forced to clarify that the Commission was not intending to ban gas stoves.⁴³

On August 1, 2024, Nested Bean again wrote to Commissioner Trumka and demanded that he immediately retract the inaccurate and misleading statements.⁴⁴ Nested Bean's letter provided evidence that his letters to retailers telling to them to not to sell weighted sleep products, citing the *Washington Post* article that expressly named Nested Bean, resulted in most retailers only taking down products of the two companies named in the article. *Id.* Retailers were still selling weighted sleep products, just not Nested Bean. *Id.* Trumka ignored the retraction request.⁴⁵

On August 26, 2024, the ASTM F15.19 subcommittee released report “ASTM F15.19 Data Analysis Task Group Wearable Infant Blanket-Related Incident Data.”⁴⁶ ASTM completed

³⁸ Comm. Trumka Letter to Nested Bean, dated July 22, 2024 (Exhibit “21”).

³⁹ Congressional Small Business Committee letter to CPSC Chairman, dated July 25, 2024, available at https://smallbusiness.house.gov/uploadedfiles/07.25.2024_-_cpsc_letter_re_trumka.pdf (Exhibit “22”).

⁴⁰ GOP panel accuses safety commission's Richard Trumka Jr. of pressuring private businesses, Zack Halaschak, July 25, 2024, available at https://www.washingtonexaminer.com/policy/finance-and-economy/3098110/gop-panel-accuses-safety-commissions-trumka-jr-pressuring-private-businesses/#google_vignette.

⁴¹ Gas stove ban not in the works, agency chairman says amid uproar, Breanne Deppisch, January 11, 2023, available at <https://www.washingtonexaminer.com/news/405289/gas-stove-ban-not-in-the-works-agency-chairman-says-amid-uproar/>.

⁴² The obscure regulator (and political scion) who sparked the furor over gas stoves, Breanne Deppisch, January 12, 2023, available at <https://www.washingtonexaminer.com/news/2277854/the-obscure-regulator-and-political-scion-who-sparked-the-furor-over-gas-stoves/>.

⁴³ Statement of Chair Alexander Hoehn-Saric Regarding Gas Stoves, January 11, 2023, available at <https://www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-Saric/Statement/Statement-of-Chair-Alexander-Hoehn-Saric-Regarding-Gas-Stoves>.

⁴⁴ Nested Bean 2nd Retraction Letter, dated August 1, 2024 (Exhibit “23”).

⁴⁵ Comm. Trumka Letter to Nested Bean, August 16, 2024 (Exhibit “24”).

⁴⁶ CPSC and ASTM F15.19 Wearable Infant Blankets Data Analysis and Performance Requirements Task Force Meeting Log, Aug. 26, 2024, available at <https://www.cpsc.gov/s3fs-public/08-26-2024-ASTM-F15-19->

a Hazard Analysis using CPSC’s data on safety incidents involving various infant sleep products and found that there was no unique hazard pattern associated with weighted infant sleep products. *Id.* The report demonstrated that a combination of unsafe behavioral sleep practices were typically present in reported fatalities including swaddling past rolling age, bottle propped, co-sleeping, incline, soft bedding, use of products that have since been banned, and leaving a bottle unattended, all proven unsafe practices. *Id.*

Argument

Trumka’s statements reflected adversely on the safety of Nested Bean’s products

Commissioner Trumka’s statements specifically identified Nested Bean. Nested Bean’s identity was readily ascertainable from the *Washington Post* article included in Commissioner Trumka’s January social media posts. The January post claims that the CPSC believes that weighted infant sleep products pose a serious threat to babies’ lives. It implies that the CPSC has determined weighted infant sleep products are hazardous, but the CPSC has not made that determination. This posts also implies that the CPSC has gathered enough research and proof of hazard to properly create safety standards for products being marketed infant sleep products. Instead, there are no mandatory rules established for weighted infant sleep products; in fact, there is not even a definition as to what qualifies as a weighted infant sleep product. There’s so little evidence of a hazard pattern specific to Nested Bean’s products that the ASTM has not adopted voluntary standards and definitions for this class of products. The bottom line is that the CPSC does not have enough evidence of a hazard pattern to justify mandatory rule making. In November 2023, the Commission expressly rejected Commissioner Trumka’s proposal to promulgate a mandatory rule for these products in Fiscal Year 2024 because there was not enough scientific data. The CPSC’s mission is protect the public against unreasonable risks of injury or death – and without scientific data showing an unreasonable risk of harm or death, the Commission cannot create mandatory rules. Yet this post was made *after* the Office of Compliance determined there was no suffocation hazard associated with Nested Bean’s products and the Commission’s decision that there was insufficient research on the class of products to promulgate mandatory rules, and *before* the completion of CPSC’s ongoing research into the safety of weighted infant sleep products.

Trumka’s April 15th statements were equally inaccurate and misleading. His posts direct the public to “NOT” use weighted infant sleep products. This statement misleadingly implies that the CPSC has made a determination of a hazard pattern and issued a recall or stop sale of an unreasonably dangerous product, and it implies that there was proper rulemaking in creating definitions and standards for this class of products. But none of that is true. Its statement that “companies will try to fool you into thinking they’re safe” because it is unsubstantiated and wrongly implies that CPSC had conducted research to debunk safety claims. Commissioner Trumka’s video post also included an intentionally dramatized photo showing a baby with metal dumbbells on its chest. This image was intentionally misleading and clearly intended as a scare

[Wearable-Infant-Blankets-Data-Analysis-and-Performance-Requirements-Task-Group-Meeting-Log.pdf?VersionId=oeAGyPq1PytG.AICZXfHv0n16VFCFVvr.](#)

tactic. Nested Bean's products for newborns weigh only 30 grams and apply a similar amount of pressure as infant car seat buckles.

Trumka's April 15 statements to retailers was especially egregious. Trumka's letter was a deceptively coercive tactic to get retailers to pull a product that he had no authority to demand that they pull. Only the Commission can issue a recall or stop sale. Yet that is exactly what he tried to do. In the first paragraph of his letter to retailers, Trumka bolded the words "multiple infant deaths," and "Don't" in advising not to use weighted sleep blankets or swaddles. These letters were inaccurate and misleading in that they implied that the Commission had issued a recall or stop order, had made a determination based on research and science that a hazard pattern was evidenced in this class of product, and that the Commission had promulgated definitions and mandatory standards for this class of products. This was evidenced during the meeting called by retailer Target with Nested Bean, when the retailer wanted to know if there had been fatalities in Nested Bean products and if there was going to be a "recall." Commissioner Trumka's letter had clearly led them to believe so. But none of that was true. The letter later cited to the same *Washington Post* article that named Nested Bean. This was grossly misleading because there have been no pattern of injuries associated with Nested Bean's products nor have there been any deaths caused by them, and the CPSC staff did not find any hazard pattern associated with Nested Bean's products. Major retailers obviously identified Nested Bean as a producer of the alleged hazardous product because they only pulled Nested Bean and Dreamland (the other named company in the *Washington Post* article) and not those of any other manufacturer. Because Nested Bean was readily ascertainable, it was entitled to pre-disclosure notification from the Commission, but Nested Bean never received such disclosure. Further, the Commission failed to take reasonable steps to ensure that the information disclosed was accurate, fair under the circumstances and reasonable related to effectuating the purposes of the CPSA. The information was disclosed before the CPSC had conducted adequate research, without a regulatory definition of weighted infant sleep products, failed to take into consideration other safety research in CPSC's possession, and failed to include this context for consumers and retailers.

Commissioner Trumka's statements were made in his official capacity and attributable to the CPSC, which means the Commission must correct the inaccuracies and misleading statements. The Commission cannot shirk its duty to retract Trumka's statements under the falsehood that they were made in his "own capacity." Every one of Trumka's letters was made on official CPSC commissioner letterhead, signed by "Your consumer advocate at the Consumer Product Safety Commission," posted on the CPSC's website, and posted to Trumka's official social media pages where his handle is "Commissioner Rich Trumka, Jr." @TrumkaCPSC. All of these actions qualify as state action. That would be true even if Trumka's action had been limited to his social media posts, which they were not. The U.S. Supreme Court recently found state action by a city official using his once-personal social media page because he transformed it into an official page. *Lindke v. Freed*, 601 U.S. 187 (2024). The court provided a test to determine when a government official's use of social media constitutes state action for First Amendment purposes. "When a government official posts about job-related topics on social media, it can be difficult to tell whether the speech is official or private." *Id.* at 191. The court held "that such speech is attributable to the State only if the official (1) possessed actual authority to speak on the State's behalf, and (2) purported to exercise that authority when he spoke on social media." *Id.* The court reasoned that because, among other things, the page was

open to the public, used professional city official picture, listed city website and city phone number, posted about city business, informed the public of city activities, solicited public feedback, and answered public questions about city business that the social media activity was state action. *Id.* at 191-192. Trumka’s social media pages are likewise official CPSC pages, not personal pages. His handle is “Commissioner Rich Trumka, Jr.” @TrumkaCPSC, he describes himself as CPSC Commissioner, he uses his official CPSC photo, and his posts all pertain to product safety and CPSC business. Both the Commission and individual commissioners must adhere to the CPSC’s due process protections: “The provisions of this section [Public Disclosure of Information § 2055] shall apply whenever information is to be disclosed by the Commission, any member of the Commission, or any employee, agent, or representative of the Commission in an official capacity.” 15 U.S.C. § 2055(d)(2). Likewise, the ability to retract statements applies to both statements made by the Commission and statements made by individual commissioners. A retraction can be requested by anyone who “believes the Commission *or an individual member* . . . has made public disclosure of inaccurate or misleading information, which reflects adversely [] on the safety of a product” 16 C.F.R. § 1101.52(b) (emphasis added). Therefore, the Commission has the authority to retract or correct Trumka’s inaccurate and misleading statements.

The CPSC Safe Sleep Guidelines reflect adversely on a class of consumer products

The CPSC Safe Sleep Guidelines contain an inaccurate and misleading statement that reflects adversely on an entire class of consumer products, weighted infant sleep products. The CPSC Safe Sleep Guidelines specifically recommend: “Don’t use weighted blankets or weighted swaddles*.” The Commission’s statement is subject to retraction because it is inaccurate and misleading as to the general product category of “weighted infant sleep products” for the following reasons.

First, the Commission has not defined “weighted infant sleep products.” There is no definition of weighted blankets, weighted swaddles, or any other weighted infant sleep products. This makes the statements inaccurate and misleading because some “non-weighted” products or those “not marketed as weighted” are actually heavier than some that are marketed as “weighted” products. Without clarification consumers will inevitably be misled to believe that products marketed as “weighted” products are more dangerous than “nonweighted” products, when in fact the term has not been defined and does not carry any real meaning. Retailers have also been confused and misled by the Commission’s statements due to the lack of specificity as to “weighted infant sleep products”; some retailers only removed the products of Nested Bean and one other manufacturer, while leaving other similarly filled or heavily weighted products available for sale. Retailers and consumers were forced to make their decisions based upon the incomplete information provided in the Commission’s statements which lacked sufficient specificity in the definition of which products or types of products were in fact hazardous. The statements unfairly and inaccurately lumped Nested Bean’s products in with other heavier products despite sufficient empirical evidence across its millions of sold units with no hazard pattern that Nested Bean’s products are not hazardous.

Second, the statements do not align with scientific research in the Commission’s possession. The Commission has not promulgated mandatory standards and definitions because it does not have enough evidence of a hazard pattern. Instead, all the evidence it does have indicates that

there is no unreasonable risk of injury or death. The 2023 safety evaluation of Nested Bean products conducted by CPSC staff could not find a hazard pattern as therefore determined that “no further action was required.” The August 2024 Hazard Analysis completed by ASTM using CPSC data showed that there was no unique hazard pattern associated with the class of weighted sleep products. CPSC also has in its possession further safety studies Nested Bean provided in communications with Commissioners throughout 2023-2024 which demonstrate the safety of Nested Bean’s products. The CPSC has in its possession sufficient proof that Nested Bean’s products are not hazardous. The data demonstrates that at the very least Nested Bean’s products are no less safe than other filled or unfilled products in the market. The data also shows that Nested Bean’s products’ overall weight is not heavier than other products. Based on millions of units sold, with no hazard pattern, Nested Bean’s products simply do not pose an “unreasonable risk of injury.”

Third, the statements are inaccurate and misleading as to the Commission’s official position on the matter. The Commission has not taken the required steps to promulgate a standard, issue a stop sale order, recall, or ban. The Commission expressly voted NOT to promulgate a standard in Fiscal Year 2024 at its November 2023 meeting. Commissioner Trumka’s statements were not made in his personal capacity: they were posted on the CPSC’s official website, or posted from his X account with the handle @TrumkaCPSC and tagged CPSC’s official X account @USCPSC. He is wielding his title and position to coerce retailers to remove Nested Bean’s products. Commissioner Trumka expressed his displeasure with the CPSC failing to adopt his proposed amendment to add a task to the 2024 operating year that would have required the CPSC to initiate rulemaking procedure to create a standard for weighted infant sleep products. It was November 2023 when CPSC declined to adopt Commissioner Trumka’s proposed amendment. Then by April of 2024 Commissioner Trumka took it upon himself to notify retailers that weighted infant sleep products were unsafe.

Fourth, the Suffocation and Overheating Hazards referred to in the CDC and NIH guidelines can be associated to any soft surface including all filled wearable sleep products. Without definition, context or scope, statements on CPSC website are overwhelmingly inadequate and therefore misleading.

Last, but not least, CPSC must perform its own risk assessments because it is improper for the CPSC to merely rely on pronouncements of other organizations for the determination of risk associated with a specific product. The National Institute for Health (“NIH”), the Centers for Disease Control and Prevention (“CDC”), and the American Academy of Pediatrics (“AAP”) are *not* the agency statutorily authorized to determine the safety standards for consumer products. Regardless of any internal CPSC policy, it is an improper delegation of duty to simply rely on the statements of other organizations to articulate the safety or hazard of a consumer product. Generic statements, should not effectuate standards impacting specific products without proof or cause. It is a dereliction of the CPSC’s duty to rely on safety determinations made by other organizations without conducting its own research despite having access to numerous relevant studies and reports. The collaboration between the organizations does not negate the CPSC’s responsibility to determine the safety standards for consumer products. Just as the Commission has stated that recommendations from Commissioner Trumka can be ignored by the retailers, the Commission could choose to ignore recommendations from the CDC and NIH until there is

enough factual evidence to base standards, definitions and comprehensive guidelines on before sharing them with the public.

Requested Remedy

Nested Bean maintains that CPSC should retract all of the statements about Nested Bean's products referenced above in full. Since the CPSC recently declined to retract the full statements, however, we propose in the alternative that the CPSC add more specificity to clarify its statements.

As to Trumka's statements, we request that the CPSC issue a statement to clarify and correct Trumka's inaccurate and misleading statements about Nested Bean's weighted infant sleep products in particular. This statement should clarify that: (1) Trumka's statements regarding "risk of death" and "multiple infant deaths" are not attributed to Nested Bean's products, (2) there has been no recall on Nested Bean's products; (3) the Commission has not issued a no stop sale order for Nested Bean's products; (4) there has been no hazard pattern identified with Nested Bean's products; (5) there have been no known incident or CPSC investigation report concluding that any of its products are hazardous; and (6) CPSC has not adopted any voluntary standards, mandatory standards, or definitions for weighted infant products.

For the CPSC statements, we request that the Commission issue a statement and revise the Safe Sleep Guidelines on the CPSC website to: (1) clarify that the CPSC has not adopted any voluntary standards, mandatory standards, or definitions for weighted infant products; (2) identify what types of products are included in the terms "weighted blankets" and "weighted swaddles"; and (3) provide summaries of, and direct links to, the CPSC scientific research demonstrating hazard patterns associated with the weighted products referenced. That research should include: (1) the August 2024 Hazard Report conducted by ASTM using CPSC data, (2) CPSC's own findings about the safety of Nested Bean's products from its April 2023 safety evaluation, and (3) the studies provided by Nested Bean to CPSC in February 2024. In particular, CPSC should clarify that the August 2024 Hazard Report indicated "no unique hazard pattern" for weighted sleep products and emphasize the sleep practice hazards that were identified in the report. This will assist consumers and retailers in assessing the safety of various products and help parents make informed decisions about what safe sleep practices to utilize.

A proposed clarifying statement is enclosed for your reference. *See Enclosed Proposed Statement.*

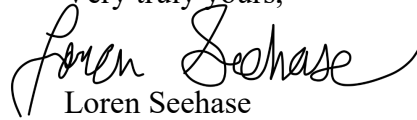
These suggested corrections are in keeping with the CPSC's mandate to carry out the mission of the Consumer Product Safety Act; consumers and retailers must be provided with accurate and non-misleading information about the risk of hazard of various products in order to make an informed decision about which products to utilize. The information that CPSC has made available regarding weighted infant sleep products does not achieve this objective, but rather undermines it by scapegoating products that do not pose an unreasonable risk to safety. If these corrections are not made, it is likely that parents will believe that they have made safe choices for their child's sleep while unknowingly continuing to engage in identified unsafe sleep practices.

Nested Bean cares about the safety of children, and that is what motivates this request for correction and retraction.

Conclusion

Nested Bean has suffered catastrophic financial losses because of Trumka's baseless public statements and his demand that major retailers stop selling Nested Bean's products. The CPSC has exacerbated the inaccurate and misleading information given to the public by failing to clarify the Safe Sleep Guidelines and by endorsing Trumka's improper actions and misleading statements. Therefore, we request the Commission work expeditiously to take action on this request within 30 working days and issue the requested corrections.

Very truly yours,

A handwritten signature in black ink that reads "Loren Seehase". The signature is written in a cursive style with a large, stylized "L" and "S".

Loren Seehase
Attorney for Nested Bean, Inc.

Proposed Statement of Retraction/Clarification

Over the past several months there's been a lot of confusion around weighted infant sleep products, and I/we would like to clarify where the Consumer Product Safety Commission (CPSC) stands.

1. **No Mandatory Standards or Stop-Sale Orders:** The CPSC has not issued any mandatory standards for weighted infant sleep products,¹ nor has it directed any retailers to stop selling these items.² Retailers are fully authorized to continue selling them both online and in stores.
2. **Research Findings:** Research conducted by ASTM, with support from the CPSC, has found no consistent safety hazards specifically linked to weighted infant sleep products.³
3. **Definition Still in Progress:** Currently, there's no official CPSC definition for "weighted infant sleep products". Many products have added filling, with weights that can vary greatly.⁴ In fact, some products labeled "weighted" are actually lighter than those not labeled as such.⁵ The CPSC Research Team is eager to work with the American Academy of Pediatrics (AAP) to develop a clear, standardized definition.⁶
4. **No Recalls Required:** If any retailers acted on what they perceived as a CPSC requirement to remove these products and executed a recall protocol based on a perceived CPSC requirement^{7 8}, those actions can be reversed.

The CPSC is committed to developing clear definitions and standards for this category based on the physical characteristics and actual hazard patterns, rather than just labeling or marketing terms.⁹ We hope to provide more detailed guidance once this process is complete.

¹ CPSC FY24 Decisional Meeting, available at <https://www.cpsc.gov/s3fs-public/Comm-Mtg-Min-FY-2024-Operating-Plan-Decisional.pdf?VersionId=GDwWSUy29P7SN9MpqVVWdX5Nn9xe36Vm>.

² CPSC Response to Retraction Request of Dreamland Baby Co.(Part 2), Aug. 30, 2024, <https://www.cpsc.gov/s3fs-public/RCA-DreamlandBabyCoRetractionRequest-Part2.pdf?VersionId=9LzlrKMye9ea933GS6qDfUR5fSn3M0Lc>

³ CPSC and ASTM F15.19 Wearable Infant Blankets Data Analysis and Performance Requirements Task Force Meeting Log, Aug. 26, 2024, <https://www.cpsc.gov/s3fs-public/08-26-2024-ASTM-F15-19-Wearable-Infant-Blankets-Data-Analysis-and-Performance-Requirements-Task-Group-Meeting-Log.pdf?VersionId=oeAGyPq1PytG.AICZXfHv0n16VFCFVvr>

⁴ CPSC, Staff Comments on Wearable Infant Swaddles Ballot, Nov. 16, 2023, https://www.cpsc.gov/s3fs-public/CPSC-Staff-Comments-on-Wearable-Infant-Blankets-Swaddles-Ballot-ASTM-F15-19-23-03.pdf?VersionId=C171nuNDVDRo4SOdCZmAN5_hPlac9GRp

⁵ *Id.*

⁶ Statement of Ex-CPSC Executive Director Jason Levine during FY24 Operating Budget Briefing available at, <https://www.youtube.com/watch?v=Vj7d7gb4DFc&t=3907s>

⁷ CPSC, *CPSC issues an administrative complaint against Amazon to force the company to recall hazardous products*, July 14, 2021, <https://www.cpsc.gov/Newsroom/News-Releases/2021/CPSC-Sues-Amazon-to-Force-Recall-of-Hazardous-Products-Sold-on-Amazon-com>.

⁸ CPSC, *CPSC finds Amazon responsible for Hazardous Products Sold by Third Party Sellers on the marketplace*, July 30, 2024, <https://www.cpsc.gov/Newsroom/News-Releases/2024/CPSC-Finds-Amazon-Responsible-Under-Federal-Safety-Law-for-Hazardous-Products-Sold-by-Third-Party-Sellers-on-Amazon-com>

⁹ https://www.cdc.gov/reproductive-health/features/babies-sleep.html?CDC_AAref_Val=https://www.cdc.gov/reproductivehealth/features/baby-safe-sleep/