

Global Headache

'Righteousness' delays world safety standards

By Richard Gottlieb

The toy industry has been in the forefront of the global economy. This has been a good thing for the industry, consumers and children. Or at least it had been until last year's spate of Chinese product recalls. Now, national and even local governments are generating sometimes conflicting new laws that, though well-intentioned, will certainly confuse and could possibly damage the toy industry.

Why has this happened? One major cause is that the global economy is more developed than the necessary political, cultural and legal infrastructures needed to support it. In short, there is no global safety protocol in place to support a global economy. Rather, our world economy is supported by a patchwork of national and local safety regulations and enforcement mechanisms. This patchwork is in turn layered on top of various and unshared concepts of government,

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varying notions of what constitutes risk, and divergent interpretations of science.

As a result, we have laws that not only vary from country to country but, at least in the United States, from state to state. Before we can move to the holy grail of a global toy safety standard, we will have to work our way through a maze of ideas and world views that are going to take patience and empathy to resolve. Following are the key hurdles in that effort.

Risk aversion

Take a look at risk. In the United States, the outlook towards risk tends to be one of "acceptable risk." In other words, it is economically inefficient and likely impossible to totally eliminate risk, so the idea is to engage in risk management. In other countries, there is a much lower tolerance—sometimes zero tolerance—towards risk. This means that if there is any indication, no matter how small or tenuous, that something is potentially dangerous, it must be banned.

To date, the debate has been about who is right when it comes to risk. To settle on a world standard, however, we will need to move beyond taking "righteous" positions and towards taking problem-solving ones.

Legal maneuvers

The current rush by state governments in the U.S. to pass lead-related safety laws is a case study in how well-meaning people can come to differing conclusions about the same subject. As of my writing this column, 32 out of 50 states had passed or were actively considering laws to regulate toy safety. These state laws vary greatly in the level of lead they will tolerate. For example, look at the acceptable levels of lead (in parts per million) in four US states:

■ Massachusetts	1,000 ppm
■ Maryland	600 ppm
■ Washington	90 ppm
■ California	40 ppm

The "righteous question" is whether Massachusetts and Maryland have less caring legislatures than Washington and California or whether the former are just more prudent than the latter? The "problem solving" question is, of course, How do we come to a consensus on a new lead-level standard?

Scientific ambiguity

Imagine this scenario: You are sitting there eating your beloved marshmallows when a news report tells you that eating marshmallows causes "marshmallow head," a disease that causes your head to turn white, puffy and just a bit oblong. You spit the marshmallow out and throw the rest of the package into the trash. Then, at various picnics and cookouts you gain a reputation as an anti-marshmallow activist who lectures other attendees on the risk of eating marshmallows. Two years later, a new study is released that claims

eating two marshmallows every day actually promotes health. (You either then commit suicide or your former friends, the pro-marshmallow crowd, kill you.)

Some of the science surrounding these new safety laws is kind of like that. We overreact to every study that comes out and take black and white positions. It's not bad science that's the problem. It's "righteous" science. We need "problem solving" science.

Government one-upmanship

Governments are a bit like people. They have egos and don't like to be insulted or taken for granted. China was insulted by the way it was depicted in the world's press during last year's recalls. Stung by accusations that they did not have effective laws or enforcement procedures in place, the Chinese passed stringent new regulations and closed numerous factories. As a result, they will insist on making their own laws.

The U.S., in turn, says its job is to protect its own people from dangerous imports so it insists that Chinese laws are not enough. It must have its own laws. The European Union, which sees the U.S. as too lax for its tastes, says the same. Whose laws will prevail? The current "righteous approach" polarizes governments and results in redundant costs and confusing laws. A "problem solving" approach could move beyond these polarizing positions to a practical solution.

As frustrating as it seems right now, I believe we will see a consensus emerge in the next few years. When you think about it, having one world standard for toy safety really is righteous. It's good for people, it's good for business and it's good for government. And when something is good for all three constituencies, you can bet it will probably happen.

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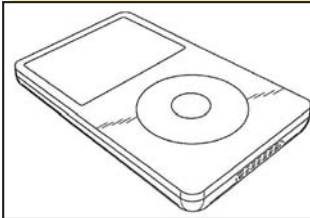


Design Envy

RECOGNIZE THE DESIGN BELOW? Unless you're a hermit, chances are pretty good that you do. Apple's iPod is simple and fun to use. Perhaps just as important for many of us is the iPod's design; it's sleek and stylish. And, that design is patented. Surprised? If you are, chances are pretty good that your company should be thinking more seriously about protecting the designs of your products.

In prior columns I've talked quite a bit about what we typically call patents—"utility patents." These are patents that protect how things work. But there's another important type of patent called a "design patent." It protects the "ornamental" nature of a product—in other words, how the product looks, as opposed to how it works.

Because of the significance of a product's aesthetic appeal to a consumer's purchasing decision, a design patent can be a very important weapon to have in your arsenal to prevent others from copying that



same aesthetic look in their own products.

Much of the strategy in protecting designs through patents comes from choosing the particular design features to protect, and those to ignore. Counter-intuitively, a design patent that focuses on a narrow feature can be far more valuable than one that includes the entire look of the product.

Also, make sure to file far enough in advance of product launch so you can immediately enforce the patents when the products hit the shelves. Design patents are well-suited for this strategy because they can be obtained in far less time than utility patents, often only 6 to 12 months from filing. Design patents, also, are usually far less expensive to obtain than utility patents.

Because of these upsides, consider filing for a series of patents to protect various aspects of the designs of your products.

What types of things can you get a design patent on? Just about any design that is new and "non-obvious" (the required legal jargon from the Patent Office). Just a few examples of design patents out there include model cars, dolls, stuffed animals, game boards, video game consoles and even graphical elements from computer or video games.

So here's the bottom line: don't overlook your products' visual appeal, and certainly don't skimp on your ability to protect that distinctive look with design patents. Chances are pretty good that the bad guys won't miss that appeal when designing their own products.



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