

August 1, 2013

Todd Stevenson
Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814-4408

Re: Petition for a Rulemaking on Artificial Turf for Playgrounds as a Children’s Product”

VIA U.S. MAIL, FAX & EMAIL

Dear Secretary Stevenson,

I am writing on behalf of Public Employees for Environmental Responsibility (PEER) to request that the U.S. Consumer Product Safety Commission (CPSC) make a formal determination declaring artificial or synthetic turf sold for use in playgrounds as a “children’s product” as defined under Section 3(a)(2) of the Consumer Product Safety Act (CPSA).

In response to a request by PEER, CPSC General Counsel Cheryl Falvey issued an advisory opinion on September 5, 2012 on the regulation of recycled tire products as a children’s product [ATTACHMENT I]. That opinion stated that recycled tire products, such a rubber mulch and crumb rubber, could not categorically be defined as a children’s product absent evidence that a company was marketing its product specifically and primarily for use by children. The opinion identified a number of uses for recycled rubber that are not primarily intended for children, such as landscaping applications and equestrian uses. The opinion concluded that –

“Rubber mulch manufactured by a company that markets, advertises and promotes its product as principally for use in surfacing playgrounds would, in most instances, be considered a children’s product...”

A cursory internet search reveals myriad of companies retailing shredded recycled tires to private individuals, schools, and municipal authorities, not just principally, but specifically for use by children. Below is a recitation of marketing promotions (with emphasis added) of the synthetic turf product for exclusive or primary use by children by ten representative companies. Copies of these promotional sales pitches are displayed in ATTACHMENT II.

It should be noted that these marketing promotions for children's use can be found in many more on-line product pitches than from the nine companies featured in the attachment. Moreover, several of the pitches emanate from child-market specific subsidiaries of larger corporations.

We believe that there is ample evidence that the following companies are marketing their product specifically for use by children. Therefore, the CPSC should take action to ensure that the lead levels in these products are in compliance with the statutory limits for children's products specified in the Consumer Product Safety Improvement Act (CPSIA) of 2008.

I. PermaLife SoftStuff™

PermaLife (<http://www.PermaLife.com>) sells recycled rubber for a variety of uses, including playgrounds, landscaping, and equestrian fill. Upon arriving at the company's website, the visitor is shown a menu displaying pictures of a number of recycled rubber products (ATTACHMENT II, Example 1). The second image is of a young boy on a tire swing with blue rubber mulch in the background with the caption "**Commercial and Residential 'Soft-Stuff' for Playgrounds**".

Below that is text that reads "**Offer your children that extra margin of safety with PermaLife SoftStuff™. This IPEMA CERTIFIED Safety Surface is a vibrant ADA and ASTM compliant 'loose fill' playground safety surface. Great for your backyard or school. Comes in your choice of colors.**" IPEMA stands for "International Play Equipment Manufacturers Association," an industry group that provides third-party quality certifications for playground equipment.

Following the link to the page for **PermaLife SoftStuff™** (<http://www.permalife.com/SoftStuff.asp>), the visitor to the webpage is shown another series of pictures of play equipment, including the boy from the previous page, a picture of a mother and her child walking across colored rubber mulch to a play structure, and a climbing structure surrounded by red rubber mulch (Example 2), below which there is caption that reads "**PermaLife SoftStuff™ For Playgrounds**". Additionally, there is a GIF on the side of the page which cycles through more pictures of playgrounds utilizing rubber mulch.

Below these pictures is a block of text outlining the benefits of using the company's rubber mulch on playgrounds, featuring the claim that it will "**keep your kids safe**" and that it is "**an environmentally-friendly playground safety surface protecting children from playground bumps and bruises**". Furthermore, it "acts like sand but is **much softer on little knees**". The online promotional pitch concludes by saying that the "product is . . . **delivered to schools, community playgrounds and residential backyards, so children can remain safe while at play.**"

It is also possible to download a brochure for the company's product that further makes the case for using their product on playgrounds (Example 3) with the claim that their

product is the “**safest surface for backyard playgrounds**” and that it protects “**our most important natural resource. Our Kids!**”

Given the multiple pictures of the use of this product on playgrounds, pictures of children interacting with this product, the IPEMA certification, and the repeated references to protecting children, this product is clearly being marketed as a children’s product and should be regulated as such. Although the parent corporation, PermaLife, does produce rubber mulch for other uses, the average consumer would certainly construe this particular brand, PermaLife SoftStuff™, as nothing but a children’s product.

II. Majestic™ Rubber Mulch

Upon coming to the website for Majestic™ Rubber Mulch (<http://www.majesticrubber.com>), the visitor is presented with the logo of the company, and immediately adjacent, the slogan “**Protecting Children, Good for the Environment**” over a picture of a play structure (Example 4).

A drop-down menu labeled “**Playground Products**” gives the visitor the option to select the following products: Shredded Rubber Mulch, Rubber Nuggets, Rubber Mini Nuggets, **Majestic Play Tuff Tiles, Swing Mats**, Rubber Flex Curbs, and Rubber Walkways.

Under Shredded Rubber Mulch (http://www.majesticrubber.com/playground_mulch.htm), there is a series of pictures of the product being used on playgrounds, including a picture of three toddlers. Next to that is a heading that reads “**Majestic Rubber Playground Mulch makes playgrounds safe and fun**” and text that lists the benefits of using this product, such as “the critical fall height for our rubber mulch is higher (safer)” and that it **reduces “mud in play areas”**.

Under Rubber Nuggets (<http://www.majesticrubber.com/nuggets.htm>), there is text that reads as follows:

“**Reduce playground injuries through increased impact absorption using Majestic Rubber Nuggets.** Mini rubber nuggets are easier to walk and run on than conventional sand or wood chips because rubber reduces stress on body joints. Rubber nuggets are the best replacement for wood chips, sand, asphalt, and gravel surfaces, and the product is ADA accessible. Majestic Rubber Nuggets are a popular safety surface around the home, too.”

There is also a list of applications, the first four of which are school playgrounds, daycare centers, public playgrounds, and home play areas, followed by suggestions for use in gardens and walkways. They also advertise IPEMA certification, and that it is safe for children, and compare it to “**other playground rubber products**”.

The page for Rubber Mini Nuggets (<http://www.majesticrubber.com/mini-nuggets.htm>) is essentially identical to the previous page. The page for Majestic Play Tuff Tiles (http://www.majesticrubber.com/play-tuff_tiles.htm) displays two pictures of play structures (Example 6). The header text asks “**Why Majestic Play Tuff Playground**

Tiles?” and then goes on to provide answers to that question, including that their “**playground tile system provides as level and resilient surface**” and that there is “**no loose playground surfacing for children to throw, kick or swallow**”. Under the “applications” heading, the first four listed applications are schools, daycare centers, public playgrounds, home play areas, and swimming pools, as well as walkways, decks, and any anti-fatigue surface.

Under the Swing Mats subsection (http://www.majesticrubber.com/swing_mats.htm), there is a body of text that claims that “hard, exposed areas on a playground can cause injuries when you fall. **Majestic Swing Mats will increase cushioning of any play surface and add protection for children at play**”. Under the “applications” heading, they list playground swings and slides as the first two suggestions.

Under the “Rubber Flex Curb” section (http://www.majesticrubber.com/flex_curbs.htm), there are two pictures of the curbs containing rubber fill around play structures (Example 7). The text claims that “Rubber Timbers will **make any playground area safer and more attractive**”, and under the “applications” section, the first suggestion listed is “safe playground borders”.

All of these products make specific claims in text, and some in pictures, suggesting that consumers should use these products to facilitate safe play by children. All are listed as having primary applications on playgrounds, and all make claims that use of the products will make children safer. A reasonable consumer would inescapably conclude that the primary purpose of these products is for use in children’s play equipment, even though the company does list some landscaping uses. Thus, the CPSC ought to regulate these products as children’s products.

III. Rubbermulch.com

Upon arriving to the rubbermulch.com website (phone number, 888.492.PLAY), the visitor is presented with a picture of a play structure surrounded by rubber mulch (Example 8). Clicking on the image leads to a webpage (<http://www.rubbermulch.com/playground.htm>) which has the same picture of the playground next to heading that reads “**Rubber Mulch for Playgrounds**”. In text under that, it is claimed that this product is “proven to be the most effective safety surfacing available, Rubber Mulch **cushions the impact of dangerous falls and shields children from playground injuries . . . Rubber Mulch Playground surfacing is ready for fun no matter what the weather!**” Below that, the site says that the mulch is “available for homes, schools, daycare centers and townships . . . **Invest in the safety of your playground today!**” Below that there is a picture of a child jumping off a play structure onto mulch (Example 9).

Next to that image is a link to the page for Rubber Curbs and Wear Mats. On this page (<http://www.rubbermulch.com/curbs.htm>), there is a collage of pictures of play equipment and children using play equipment (Example 10). The title text reads “**Round out your playground surfacing with Rubber Curbs and Wear Mats**”. Under the “Wear Mats” subsection, the company claims that they are “**designed to provide extra**

cushioning for high-impact areas such as swings and slides” and that they “keep kids safe no matter what the activity”.

These products are clearly being marketed primarily for use by children in a playground setting. The CPSC ought to regulate these products as children’s products and enforce strict limits on their lead content.

IV. TotTurf

It almost goes without saying that a company named TotTurf is marketing products for children under 12. However, the following examples should assuage the doubts of anyone not convinced by the company name alone.

Upon arriving at their website (<http://www.totturf.com>), the visitor is presented with a picture of no fewer than 18 easily identifiable small children engaged on a play structure surrounded by a brightly colored rubber surface (Example 11).

Among the products that TotTurf offers is a substance called “**Playground Rubber Mulch**” (<http://www.totturf.com/products/rubber-mulch/playground-rubber-mulch>). This product is offered in contrast to their landscaping mulch. The company claims that it offers “one of the highest impact attenuation ratings” and lends a “natural and attractive look for the play area”.

In addition to this product, TotTurf offers a veritable buffet of other playground surfacing options, including synthetic turf options designed for playground use, a full list of which can be found at <http://www.totturf.com/products/playground-surfacing>. All options are marketed as being designed for use on and around play structures and include pictures of play structures on their respective web pages.

The company is also IPEMA certified and claims that their products enhance playground safety by reducing injuries (<http://www.totturf.com/about-us/certifications>).

Clearly, TotTurf is marketing products for use by children. The name of the company, its parent conglomerate, its claims about enhanced child safety through the use of its products, the pictures of play areas and play structures with children on them, and the suggestions that these brightly colored materials be used on playgrounds would all lead the average consumer into believing that this product was intended for use primarily by children, and not for landscaping or equestrian use.

V. Leader Mulch

Upon arriving at the Leader Mulch website (<http://leadermulch.com>), the visitor is presented with a slideshow of the various uses for their product, including a picture of a play structure surrounded by the mulch captioned “perfect for playgrounds” (Example 12).

On their “gallery” page (http://leadermulch.com/rubbermulch_gallery.php), there is another slideshow showcasing the uses of their mulch. Of the 17 photographs presented, two are of play structures surrounded by their mulch.

In the product descriptions for their mulch, crumb rubber, and synthetic turf, the company claims that the use of the product will create “a safer, more colorful recreational and Landscape [sic] environment” (http://leadermulch.com/rubber_mulch_products.php). Under their F.A.Q. section, they claim that their product is safe for children, even when ingested, and boast IPEMA certification.

A consumer shopping for Leader Mulch would conclude that a primary use for this product is its use around children’s play structures. Even though the company advertises the use of its mulch and other products in landscaping applications, the multiple pictures of the products being used around play structures, the text advertising the product as “perfect for playgrounds”, and IPEMA certification would lead consumers to believe this is a product designed for use by children and may lead them to purchase it for such a use.

VI. RubbeRecycle

Arriving at the RubbeRecycle website (<http://www.rubberecycle.com>), the visitor is treated to a slide show of the various uses that RubbeRecycle products can be used for. Two of these pictures (Examples 13 and 14) are of play equipment, and one shows a young girl sliding on to a rubber surface.

Below this display are links to various products, including three called **PlaySafer Rubber Mulch, PlaySafer RubberBond, and PlaySafer Rubber Curbs and W earmats**. Following the link to the PlaySafer Rubber Mulch (<http://www.rubberecycle.com/rubber-mulch.php>), the visitor is presented with a picture of a play structure surrounded by blue mulch (Example 15). Below is a link to more photographs of the product (<http://www.rubberecycle.com/photos.php>), of which 10 out of 16 are clearly of play structures. The company boasts IPEMA certification for the product and claims that the product “is a **unique rubber granule designed specifically to make playgrounds safer for children of all ages**”. The page goes on to make further claims about the safety benefits of their product for children. At the bottom of the page is another image of a young boy jumping off a play structure into the mulch (Example 16).

The page for PlaySafer RubberBond (<http://www.rubberecycle.com/rubber-bond.php>) likewise has a picture of a play structure surrounded by the product (Example 17). The product is also IPEMA certified.

Similar claims and certifications are made for the Rubber Curb and W earmat products, and both carry IPEMA certification. The webpage (<http://www.rubberecycle.com/rubber-curb.php>) also carries a picture of a young boy on a slide with a W earmat at the bottom (Example 18).

Under the “Shop” section (<http://www.rubberecycle.com/shop.php>), two pictures of playgrounds link to pages where tire crumb products may be purchased (Example 19). The “for your home” link takes the visitor to rubbermulch.com (see above).

Although RubbeRecycle does market recycled tire products for other uses, an average consumer would have no doubt that the above-listed products are intended primarily for use by children in a playground setting.

VII. CRM Rubber

CRM Rubber (<http://www.crmrubber.com>) is a manufacturer of recycled rubber products and does not market directly to consumers. However, on their website they clearly identify one of the potential uses for their recycle rubber as children’s products. Upon getting to their homepage, the visitor is presented with a slideshow showcasing potential uses of recycled tires. Among this slideshow is an image of a child playing with a toy on a rubber mat (Example 20). Below is a block of text detailing potential uses of their product, including “colorized rubber mulch for landscape and playground coverage”.

Under the heading for their rubber mulch (<http://www.crmrubber.com/products/landscaping>), the company claims that the use of their product will make “**playgrounds more safe**”. Additionally, on their Facebook page (<https://www.facebook.com/CRMRubber>), their banner picture includes a picture of a playground (Example 21).

Although CRM Rubber does manufacture and market its recycled rubber products for applications other than children’s products, they clearly indicate that a potential use of their recycled rubber is for children’s safety structures. A consumer would be easily led into using these products for children.

VIII. KidWise Outdoor Products, Inc.

KidWise Outdoor Products, Inc. (<http://www.kidwiseusa.com>) sells a line of “premier bounce houses, play sets, Swing sets, trampolines, ride on bikes, wagons and other **outdoor products [that] appeal to kids across the globe**”. The picture on their homepage is of a number of brightly colored children’s play structures (Example 22).

They sell products labeled “landscape mulch” and “playground safety surfacing”. The playground safety surfacing is clearly being marketed for use by children. The landscaping products are less clearly being marketed for children, though they are still being sold under the aegis of a company clearly marketing products for children. A consumer could easily be led into believing that their landscaping mulch products are designed for use by children because the company itself, by its name and other indicia, is in the business of marketing products designed especially for children. Thus, the CPSC should seriously consider regulating all KidWise products as children’s products as well.

IX. Ecore and Surface America

Surface America (Transforming what America Plays On) and Ecore sell safety surfacing for playgrounds (<http://www.surfaceamerica.com/index.php>,

<http://www.ecoreintl.com/index.php>), among other recycled rubber products. When a visitor arrives to the Surface America website, there is a slideshow of pictures of play equipment surrounded by brightly colored recycled rubber surfaces (Examples 23-6). They sell poured rubber products, rubber tile, and a product called **PlayBound TurfTop™**, an artificial turf product designed to be used on playgrounds (<http://www.surfaceamerica.com/index.php/products/details/playbound-turf-top>).

All their products bear IPEMA certification. All are designed to be used on playgrounds by children. These products clearly should be regulated as children's products by the CPSC

Conclusion

These are by no means the only companies marketing shredded tire products to children. Even though many of these companies market recycled tire products for other uses, this should not exempt the mulch rubber products that they do market as children's products from being regulated as such.

CPSC already classifies playground equipment such as swings and slides as children's products. If a slide is a children's product so is the synthetic material the child lands in at the bottom of the slide.

As you know, classifying a product under the definition of a children's product is no mere academic exercise. That classification carries with it the stricter standards for lead content which apply to all children's products.

The concerns about lead exposure have taken on a new urgency following the release in June of 2012 of a study done for the New Jersey Department of Environmental Protection ["Final Report: An Evaluation of Potential Exposures to Lead and Other Metals as a Result of Aerosolized Particulate Matter from Artificial Turf Playing Fields" (July 16, 2011), available at <http://www.nj.gov/dep/dsr/publications/artificial-turf-report.pdf>.] which found artificial fields made of tire crumb can contain highly elevated levels of lead much greater than the allowed levels for children:

- It reports "concerns with regard to potential hazards that may exist for individuals and in particular children who engage in sports activities on artificial fields"; and
- Inhalable lead "present in artificial turf fields can be resuspended by even minimal activity on the playing surface."

The study was hampered by the unwillingness of schools with artificial turf field to have them tested. A total of 50 schools were approached by researchers and ultimately only 5 schools consented to testing their fields. The study concludes with this observation:

"For the present time, how widespread the presence of these high lead level fields is, is an unknown. At present the economic disincentive for schools or

communities to measure the presence or absence of lead contamination appears to exceed any public concern for children's safety.”

This study shows that children running, jumping and playing as expected actually increases the risks of lead contamination. Inhalation, ingestion and dermal absorption are all pathways for lead exposure from tire crumb.

These products should not be able to evade mandatory lead standards and testing simply because the Commission has not taken the time to classify them. Thus, we formally ask the Commission to declare these artificial playground surfaces are children's products within the meaning of the law.

Should you desire any additional information in support of this petition, please do not hesitate to ask. Thank you for your attention to this matter.

Respectfully submitted,

Jeff Ruch
Executive Director