

## Ikea's 29M Dresser Recall Shows CPSC Repair Push Failed

By **Emily Field**

*Law360, New York (June 29, 2016, 11:24 PM ET)* -- Ikea's announcement that it is recalling 29 million dressers prone to toppling over and crushing children comes nearly a year after a Consumer Product Safety Commission campaign to repair the dressers, but the agency's puzzling decision to not call that initiative a recall muffled its initial impact, attorneys say.

The scope of the recall of Ikea chests and dressers — including 8 million Malm units — almost eclipses the total number of consumer products recalled last year by the CPSC, which was about 30.7 million. Last summer, the CPSC announced a repair program to provide consumers with free wall-anchoring kits to secure chests and dressers, including the Malm units — but not calling that initiative a recall was a departure from its usual practice, attorneys said.

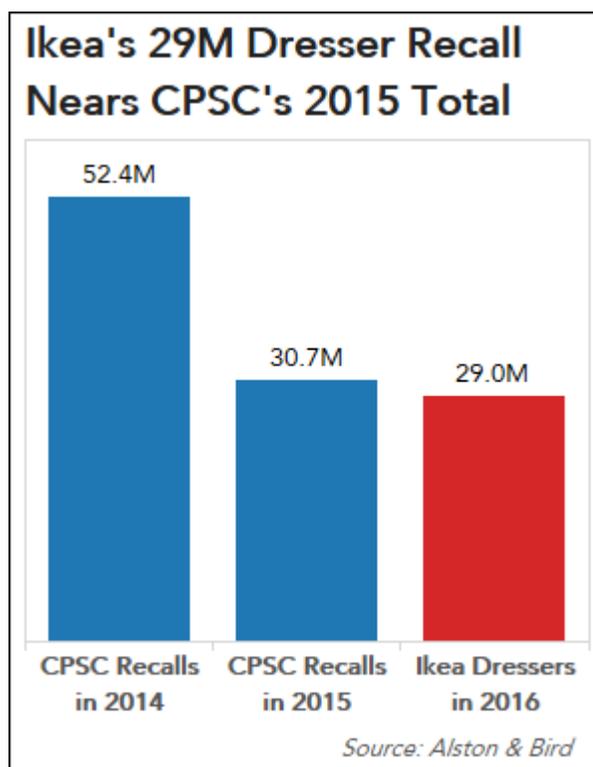
"When it was announced in July 2015 calling it a campaign and not a recall, it was the first time I can remember that the CPSC didn't use the word 'recall' in the press release," said Jenifer Keenan of Alston & Bird LLP.

The July 2015 repair program — which affected 27 million products — followed the deaths of two children, both under the age of 3, who died after Malm units fell on them. Neither unit had been secured to the wall.

Then in February, a 22-month-old boy was killed in Minnesota when a six-drawer Malm unit tipped over on him. Again, the unit hadn't been anchored to a wall.

"You just question whether there would have been more awareness of original campaign if it had been called a recall, as the CPSC has done for other repair campaigns," Keenan said.

Although the CPSC has been firm in requesting that just about any voluntary action by a company be called a recall, the 2015 repair campaign was a deviation from that practice, Cary Silverman of Shook



Hardy & Bacon LLP said.

The CPSC said on Tuesday that Ikea had received reports of 41 incidents where Malm dressers tipped over, causing 17 injuries to children between the ages of 19 months and 10 years.

And there were another 41 reports of tip-overs involving dressers other than Malms that pinned children underneath, resulting in another three deaths and 19 injuries since 1989, the agency said.

One reason the CPSC opted last year for a repair program instead of a recall campaign is that there may have been debate over whether an unsecured dresser counted as a defective product that would necessitate a recall, even if both the agency and Ikea both felt that some action should be taken to alert consumers, attorneys said.

“One can surmise that Ikea took the position that the product was sold with an anchoring kit to begin with and it was not a defective product, and so they didn’t want to call it a recall,” Gary Glass of Thompson Hine LLP said. “And one can surmise that maybe the CPSC agreed with them.”

Additionally, Silverman noted, just about anything can fall over on someone, and little kids are especially prone to climbing on furniture and pulling things down.

“The CPSC would have a difficult time if it required every TV set not to fall over,” Silverman said.

And for years, it’s been a point of contention between the regulated community and the CPSC that a recall is not a really an appropriate word for certain things that manufacturers do, such as repairs, Lee Bishop of Lee L. Bishop Law Office said.

The word “recall” also makes manufacturers leery because of fears of future litigation and brand damage, some attorneys said.

Last year, Ikea sent out 300,000 anchor kits to consumers as part of its repair program, which at the time affected 27 million products.

The Swedish retailer said on Tuesday that following the February death it was clear that there were still unsecured dressers in customers’ homes and that it believed that taking more action was the right thing to do.

It’s hard to tell in hindsight whether the low rate of participation in the 2015 repair program was due to the lower publicity it received compared to the most recent iteration, but the figure reflects the difficulties manufacturers face in getting consumers to comply with recall notices, attorneys noted.

One of the concerns that manufacturers have with potentially unsafe products is the difficulty in putting the fix in the hands of the consumers, Glass said.

“Recall programs sometimes have a limited effect ... and when people have to do things themselves, it’s even more difficult,” Glass said.

In this iteration, consumers can still ask for a free anchoring kit — and request that Ikea send someone to install it — or take the dresser back for a full or partial refund, depending on when they bought it.

The current recall affects products “that do not meet the performance requirements of the U.S. voluntary industry standard,” according to the Ikea website. Those products include children’s furniture items that are are taller than 23.5 inches and adult dressers that are taller than 29.5 inches, and the models range from three to six drawers.

Ikea’s furniture is intended to be used by apartment dwellers — and as such, tends to be on the thin side and lightweight, attorneys noted.

“It really is a question of, is there a point at which where you can’t have a dresser that is skinnier than some dimension,” Bishop said. “I don’t know how you regulate that sort of thing but this clearly is something [the CPSC] felt strongly about.”

--Editing by Mark Lebetkin and Jill Coffey.

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