15 May 2014

Ana de Miguel

Consumer & Competition Policy

Department for Business, Innovation and Skills

1 Victoria Street

London

SW1H 0ET

Dear Ms Miguel

We write in response to the consultation on the enforcement of the Consumer Protection Regulations (CPRs) in relation to copycat packaging.

To give you some background, the British Toy and Hobby Association (BTHA) represents the interests of British toy manufacturers. Our 140 members range from international toy giants to small family-run businesses that together account for over 90% of the UK toy market.  Members have to sign, each year, the BTHA Code of Practice which requires them to make safe toys in ethical conditions, market them responsibly and commit to responsible sustainability practices, reinforcing members’ commitment to making good quality toys in a responsible way.

The close copying of the packaging designs of familiar, recognisable and trusted toy products is a huge problem in the UK market. Protection via IP rights, including passing off, presents challenges as confusion is relatively narrowly defined and can be difficult to demonstrate to a court’s satisfaction. The CPRs provide wider protection, extending to confusion over quality or equivalence, yet we do not believe there to have been any enforcement action in our market since these were introduced in 2008.

Competitors that use misleadingly similar packaging may create the impression that they abide by the quality standards embodied in the BTHA Code of Practice or produce toys to industry standards of safety, responsibility and sustainability. Where they do not, they undermine the investments of others who have and exploit unfairly their reputation. Lost sales due to misled consumers represent a lost return on investment in innovation that is vital to the health of the toy market.

Were private enforcement rights to be granted under the CPRs, toy producers in the UK would have more effective remedies at their disposal than is currently the case. This will be positive for our market and we can envisage no downside.

Yours sincerely

British Toy and Hobby Association