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May 13, 2010

VIA ELECTRONIC-MAIL  
[coshita@OEHHA.ca.gov](mailto:coshita@OEHHA.ca.gov)

Ms. Cynthia Oshita  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS-19B  
Sacramento, CA 95812-4010

Re: Request for Relevant Information on a Chemical Being Considered for  
Listing by the Authoritative Bodies Mechanism: Bisphenol-A

Dear Ms. Oshita:

We are submitting these comments on behalf of the Motion Picture Association of America (MPAA)<sup>1</sup> in response to OEHHA's request for information on potential listing of Bisphenol-A (BPA) as a Proposition 65 reproductive toxicant. A listing of BPA would have a significant adverse impact on the entertainment industry and would be extremely unlikely to result in any benefit to human health if applied to products produced by the industry.

The MPAA understands that some parties have raised concern that exposure to BPA, and its related products polycarbonate plastic and epoxy resins, could pose a potential risk of reproductive harm through the ingestion of food and beverages from BPA-containing baby bottles, food packaging or other food-related products. The MPAA also understands that there is considerable disagreement among experts in this country, as well as other countries that have considered the issue, and that many of these countries have decided not to regulate BPA or do so only with regard to items such as baby bottles. They also understand that in July of 2009, OEHHA considered listing BPA, and that the Proposition 65 Developmental and Reproductive Toxicant Identification Committee voted unanimously not to list BPA as a Proposition 65 reproductive toxicant. Obviously, this issue is both controversial and subject to different opinions. Since the MPAA lacks the expertise to comment on the underlying scientific studies, these comments will not do so.

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<sup>1</sup> The Motion Picture Association of America, Inc. includes: The Walt Disney Company; Universal City Studios LLLP; Paramount Pictures Corporation; Sony Pictures Entertainment, Inc.; Twentieth Century Fox Film Corporation; and Warner Bros. Entertainment Inc.

However, the impacts of a potential listing of BPA are real and of great concern to the entertainment industry. Bisphenol-A is one of the most durable and versatile plastics available and provides numerous benefits to both manufacturers and consumers, including a high degree of durability, light weight, and heat and shatter resistance. More importantly, BPA is contained in DVDs and CDs produced by members of the MPAA as well as other entertainment-related merchandise.

The MPAA is concerned that the listing of BPA will trigger potential warning requirements for DVDs and CDs and subject the entertainment industry to a potential onslaught of litigation for which Proposition 65 is well known. The listing of a chemical under Proposition 65 imposes a significant burden on businesses that manufacture products containing Proposition 65 chemicals regardless of whether the actual product has any potential for harm. Your own website states that:

If there is no safe harbor level for a chemical, businesses that knowingly expose individuals to that chemical would generally be required to provide a Proposition 65 warning, unless the business could show that risks of cancer or reproductive harm resulting from the exposure would be below levels specified in Proposition 65 and its accompanying regulations. Determining health risks is very complex, and we recommend that businesses consult a qualified professional if they believe an exposure to a listed chemical may not require a Proposition 65 warning.

The entertainment industry is like many other industries in California and elsewhere that use BPA for its useful properties. All such industries will be affected by a potential Proposition 65 listing even though their particular products are unlikely to cause harm. Should BPA be listed as a Proposition 65 chemical, of the potential compliance options available, reformulation does not appear to be an option for DVDs and CDs. The MPAA has been informed by replicators that no viable substitute for BPA exists at this time, or is likely to exist in the foreseeable future. Thus, the entertainment industry, like other affected industries, will have to make the choice to either label their products as potentially harmful or to conduct the necessary exposure analyses to demonstrate that their products do not present a risk of reproductive harm. Depending on the number of products involved, this testing could impose a very significant economic burden on the industry.

If it should become necessary to add a warning label on DVDs and CDs, this would pose both significant logistical challenges and added expense. These products are sold throughout the United States and are distributed in many different ways. Warning requirements unique to California would be burdensome to implement. DVDs and CDs are sold through retail locations in California, but they are also sold or distributed through

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Amazon and Netflix, for example, where special rules for California could impose a greater burden than for retail sales.

In these difficult times for businesses, imposing such a costly burden cannot be justified. The MPAA urges OEHHA to carefully assess whether the science truly supports initiating the rulemaking process to list BPA. However, if OEHHA does reach the decision to initiate the listing process, the MPAA strongly urges you to consider every possible avenue available under Proposition 65 to avoid casting the net too broadly and to limit the application of that decision to just those uses of BPA that may present a risk of reproductive harm, or to concurrently adopt a Maximum Allowable Dose Level to minimize the impacts to affected industries and businesses.

If you need more information on the impacts to the entertainment industry, please contact Wendy Holt at (818) 565-0550 and for BPA-specific issues, contact me at (213) 576-1105.

Very truly yours,



Sharon Rubalcava  
**ALSTON & BIRD LLP**

SFR:dte

cc: Wendy Holt  
Melissa Patack  
Carol Lombardini

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