

## White Collar Defense & Investigations



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### The Justice Department Brings Its First-Ever Prosecution of Corporate Officers for Criminal Violations of the Consumer Product Safety Act

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*The Consumer Product Safety Act requires manufacturers, importers, and distributors of consumer products to report hazardous defects. Failure to comply can subject the individual officers and employees to criminal penalties.*

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On March 28, 2019, two California executives were indicted for failing to disclose defects with their dehumidifiers, despite multiple reports showing the product could catch fire easily. In *United States v. Simon Chu and Charley Loh*, 19-CR-00193 (C.D. Cal.), defendants Simon Chu and Charley Loh were charged with conspiracy to commit wire fraud, failing to furnish information under the Consumer Product Safety Act (“CPSA”), and defrauding the U.S. Consumer Product Safety Commission (“CPSC”), while executives of two unindicted and unnamed co-conspirator companies. The indictment also charges the individual defendants with one count of wire fraud and one count of failure to furnish information under the CPSA.

Chu and Loh are alleged to have known as early as 2012 that the Chinese dehumidifiers that they imported and sold were defective and could catch fire. According to the indictment, in July 2012, the two men received a video

from a consumer showing a burning dehumidifier. They later tested the plastic used in their products and found that, not only did the plastic burn, but the materials used did not meet safety standards. Nevertheless, Chu and Loh continued to sell the dehumidifiers, and withhold information about the defects, to avoid the costs of a recall.

Problems with the Chinese dehumidifiers were not reported to the CPSC until March 2013, but the notice failed to mention the defects or hazards of the dehumidifiers. Rather, a subsequent report stated that the dehumidifiers were “safe for use as intended.” However, the CPSC and the company that made the report eventually launched a recall of 2.2 million Chinese dehumidifiers in September 2013, including those sold by Loh and Chu.

This indictment is the first criminal prosecution for failure to report under the CPSA, which requires manufacturers, importers, and distributors of consumer products to immediately report hazardous defects to the CPSC. It is another example of the government seeking to hold individuals personally liable for corporate misfeasance. In 2012, the CPSC filed an administrative complaint against a company and sought also to hold the former CEO liable. Although the former CEO ultimately resolved his claims through a negotiated settlement, the CPSC's then-decision to add the corporate officer as a respondent is another example of the holding of individuals responsible for corporate misfeasance. Companies that may be concerned their officers and employees have engaged in misconduct, including actions or omissions that impact the health, safety, and welfare of the public, should contact outside counsel for advice. According to U.S. Homeland Security Investigations, which investigated the case, it plans to continue to aggressively target and investigate parties that may cause harm to the public.

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