UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of CENTRAL SPRINKLER CORP., and CENTRAL SPRINKLER CO., Respondents	)	CPSC DOCKET NO. 98-2

ORDER ON MOTION TO DISMISS COMPLAINT FOR LACK OF JURISDICTION AND FOR INSUFFICIENT PLEADINGS

Respondents Central Sprinkler Corporation and Central Sprinkler Company (collectively, "Central") filed, on March 26, 1998, a Motion to Dismiss the Administrative Complaint in this matter on the basis that the Consumer Product Safety Commission ("CPSC") lacks jurisdiction over Central's Omega-brand fire sprinkler heads. Respondents also assert that the Complaint fails to comport with the requirements of 16 C.F.R. § 1025.11(b)(3) by failing to sufficiently inform Central with reasonable definiteness of the factual basis of the allegations of violation or hazard, an omission also requiring dismissal or at least amendment of the Complaint. Complaint Counsel for CPSC filed a response to Central's Motion on April 13, 1998. Thereafter, Central filed a Motion for Leave to Submit Reply Brief in Support of the Motion to Dismiss. On April 21, 1998, I granted this Motion, pursuant to the discretion afforded at 16 C.F.R. § 1025.23 (c) and additionally permitted CPSC the opportunity to respond to Central's Reply Brief. Complaint

Counsel's response was filed on May 4, 1998.

Central maintains that sprinkler heads are not consumer products. Rather, along with fire sprinkler systems, they are an integral part of the buildings in which they are installed. In its view, the aim of the Consumer Product Safety Act ("CPSA" or "Act") is limited to regulating those common household products which present a danger in the consumers' homes. Noting that sprinkler systems are not customarily marketed, sold, distributed or used by consumers, it is Central's position that it was not Congress's intent for the Consumer Product Safety Act to reach such products, as they are extensively regulated by state and local authorities. Motion at 1-2.

Central argues that as its various models of its Omega-brand sprinkler heads "are designed to be incorporated in integrated fire-suppression systems built into a wide range of *residential*, commercial and industrial structures" (emphasis added), the entire fire suppression system effectively becomes merged with the structure, in a manner similar to framing, ventilation, or wiring. Id. at 3. Central also believes that its method of selling its sprinkler heads is a relevant consideration, as its marketing approach is selective, being aimed at the affected industry or trade, and to the professional contractors within that field, and because it is devoid of "customary consumer marketing" techniques such as jingles and celebrity spokespersons. Id. at 5.

Turning to the Act's statutory definition of "consumer product," including its specific listed exceptions, Central notes that, under the first listed exception, a product must be customarily produced or distributed for consumer sale or use. Taking the position that the product in question must be "available for separate acquisition by consumers," Central observes that its sprinkler heads are not available in retail outlets and are only sold to professional

contractors. From this, Central deduces that there must be significant marketing of the product to consumers as a distinct article of commerce. Id. at 8-9. Continuing with its argument in this regard, Central notes that its sprinklers are designed for use in commercial or industrial settings, and that there is only occasional crossover of its industrial products into consumer use.

Central also argues that consumers do not *use* its sprinkler heads, in the sense of "enjoying, holding, occupying, or actively availing oneself of a product," and infers that a product must be available for purchase and use by the general public "off the shelf" at a retail store outlet. Id. While conceding that the term "use" is not defined, Central looks to the legislative history for assistance, noting that the Senate version of the Act included "exposure" to the product but that the "exposure" language was not included in the final conference version. "Use," in its view, requires some sort of active consumer interaction with the product. As an example, it points with approval to State Fair of Texas v. United States Consumer Product Safety Commission, 650 F.2d 1324, 1329 (5th Cir. 1981) ("State Fair II"), a case in which consumers "used" the gondola skyride by taking a ride on the amusement. With sprinkler heads, by contrast, Consumers do not "interact with, enjoy, hold, occupy or actively avail themselves of the sprinkler system or sprinkler heads." Motion at 11.

In addition to the proper "use" of the product at issue, Central maintains that another relevant consideration is *where* the product is used. Noting that the statutory definition refers to use "in or around a household, residence or school, in recreation or otherwise," Id. at 12. Central, citing to Consumer Product Safety Commission v. Anaconda Company, 593 F.2d 1314 (D.C.

Cir. 1979)[1] ("Anaconda"), asserts that the definition does not encompass the house or building itself nor products which lose their identity by virtue of their incorporation into such structures and that, accordingly, the D.C. Circuit thereby rejected arguments that the Act's jurisdiction extends to every such incorporated component part of a dwelling.

Central also refers to state and local building and fire codes, professional organizations that have developed model building codes for fire safety and a decision of the U.S. Tax Court, as additional authorities for the proposition that sprinkler systems are an integral part of the buildings in which they are installed.

Observing that the Commission's authority to seek adjudicated relief is less broad than its authority to engage in investigation and rulemaking, Central argues that if it is determined that fire sprinkler heads are within its adjudicative authority, such a conclusion would infer that the Commission's authority in the investigative and rulemaking realms extends to sprinkler systems, a conclusion contrary to the intent of Congress that the Commission, with its limited resources, focus only on those areas clearly intended for its oversight, and not intrude into areas already well regulated on the state and local level.

Alternatively, Central argues that, at a minimum, those Omega-brand sprinkler heads installed into commercial and industrial buildings are beyond the CPSC's jurisdiction. Conceding that some of its "residential" sprinkler heads may also be installed in commercial and

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[1]Noting that the Third Circuit in Kaiser Alum. and Chem. Co. v. Consumer Product Safety Comm'n, 574 F. 2d 178 (3rd Cir. 1978), reached a contrary result holding that branch circuit wiring was a consumer product, Central argues that the Third Circuit wrongly construed the statutory provision and that, in any event, the case is distinguishable as consumers there "used" the wiring systems in order to enjoy appliances that consume electricity. Motion at 14.

industrial facilities, Central takes the position that their location matters because the Act was intended to focus on dangerous *household* products. In support of this position, Central refers to the Act's proscription over risks of injury associated with a consumer product where OSHA actions could eliminate or reduce the hazards. Central maintains that OSHA has indeed promulgated standards specifically addressing automatic sprinkler systems.

As a separate basis for dismissal of the Complaint, Central asserts that it has not been informed of the factual basis of the alleged defect and that the Complaint also fails to include a list of supporting documentary evidence, in contravention of 16 C.F.R. § 1025.11(b)(3). While made aware that the Complaint alleges that the sprinkler heads fail to operate in a significant number of instances, Central protests that the Complaint fails to inform *how* the sprinklers fail to operate. Central also asserts that the Complaint's "List and Summary of Documentary Evidence" is inadequate because the list was inadequately descriptive and no "comprehensive summary" of the documents on the list was provided.

In response, the CPSC asserts that fire sprinklers are "consumer products" within its jurisdiction, relying upon the definition of that term under Section 3 of the Act (15 U.S.C. § 2052) and in particular under subsection (a)(1)(ii). CPSC also notes that this is remedial legislation and consequently is to be liberally construed in a manner consistent with its intended purpose of protecting consumers from unsafe products. In this respect, CPSC points to expansive constructions by the Commission with their inclusion of fire extinguishers, elevators, portable gas heaters, and fire alarm equipment as consumer products and by the courts, with their inclusion of glazing materials and aluminum wiring within the term. In its view, the key requirement is that the product be a distinct and final article of commerce, not an article that

exists only at an intermediate stage of production.

CPSC also maintains that Central blurs that distinction between sprinkler *systems* and the *sprinklers themselves*. In this regard, CPSC disavows jurisdiction over sprinkler *systems* but maintains jurisdiction exists over the sprinklers, a distinction "crucial to the jurisdictional inquiry." Complaint Counsel's Opposition ("Opposition") at 7. CPSC further notes that courts have drawn similar distinctions between a system and its components as, for example, between aluminum wiring and wiring *systems*.

CPSC further asserts that sprinklers qualify as "consumer products" because they are produced or distributed for the personal use, consumption, or enjoyment of consumers. Thus, it argues, while the Act clearly contemplates coverage of an article that is produced or distributed for sale to consumers, *use, consumption or enjoyment by consumers* is also sufficient. For this reason marketing, availability in retail sales, or actual sale to the general public are not prerequisites to jurisdiction. Rather, CPSC maintains, the "true test [is] . . . whether consumers are exposed to the hazards associated with them." Id. at 11. (Emphasis in Opposition.) As the sprinklers at issue have been installed in homes, apartments, nursing homes, hospitals, schools, and recreational facilities, consumers have been exposed to the significant hazard of uncontained fire.

As to Central's assertion that consumers "use" contemplates that they "actively interact" or "manipulate" the product, CPSC notes that other similar products such as smoke detectors require no more interaction or manipulation than sprinklers, and they also only activate in an emergency. From CPSC's perspective, the consumers "use or enjoyment" is their reliance on the devices functioning during a fire. Id. at 13.

Referring to the statutory language that the consumer product be "in or around a permanent or temporary household or residence, a school, in recreation, or otherwise", CPSC asserts that this language is to be construed as an "assurance of comprehensiveness rather than a limitation on jurisdiction."[2] Id. at 13, quoting from ASG Industries, Inc. v. Consumer Product Safety Comm'n, 593 F. 2d 1323, 1328 (D.C. Cir. 1979).

Addressing Central's argument that the sprinklers become merged with the structure in which they are installed and thus become part of the housing itself and thereby excluded from coverage, CPSC refers to the Third Circuit's rejection of that argument on the basis that such an approach would result in the exclusion of many common consumer products, such as dishwashers, furnaces, or lighting fixtures.

As to Central's "partial" jurisdiction argument, CPSC asserts that, factually, the assertion that some of Central's sprinkler models are installed in commercial and industrial settings is inaccurate and that hospitals, schools, shelters and libraries are "commercial" facilities and covered by the statutory language which includes "residence(s), schools, recreational facilities and other places . . . ." Id. at 15.

Responding to Central's assertion that OSHA has supplanted its jurisdiction, CPSC maintains that the mere potential for authority, unexercised, is insufficient for Section 31(a) of the Act to be triggered, that OSHA applies only to the workplace, whereas the sprinklers here are found in a broader range of locations, and that, in any event, current OSHA regulations only apply to sprinkler *systems* and do not address the problem of defective sprinklers. Similarly,

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[2]While substantively unaffected, the quoted language actually provides, "is not a limitation on jurisdiction, but rather an assurance of comprehensiveness."

addressing Central's assertion that the CPSC is precluded from asserting jurisdiction because state and local jurisdictions already regulate the subject, CPSC asserts that these entities again only regulate sprinkler *systems*, not defective *sprinklers*, and that in any event it was Congress' intention, where the CPSC develops safety standards, that those standards preempt state and local laws.

Discussion

I. Whether Central's Sprinklers are "Consumer Products" within the Consumer Product Safety Act

The definition of "consumer product" has been described as "complex"[3] and ambiguous.[4] Added to this, the resolution of jurisdictional questions as to whether an item is a "consumer product" is made more difficult by the fact that the term "consumer" is not defined in the Act. Nevertheless, the resolution of each particular question must begin with the statutory language, which provides:

> Sec. 3 [15 U.S.C. 2052]
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> (a) For purposes of this chapter:
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> (1) The term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but <u>such term does not include</u> (Emphasis added.)
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> (A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer,

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[3]<u>ASG</u> at 1327.

[4]<u>Consumer Product Safety Commission v. Chance</u>, 441 F.Supp. 228, 231 (D.D.C. 1977).

(B) tobacco and tobacco products,

(C) motor vehicles or motor vehicle equipment (as defined by sections 102(3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. @ 1391(3) and (4))),

(D) pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. @ 136 et seq.)),

(E) any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (26 U.S.C. @ 4181) (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article,

(F) aircraft, aircraft engines, propellers, or appliances (as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. @ 1301)),

(G) boats which could be subjected to safety regulation under the Federal Boat Safety Act of 1971 (46 U.S.C. @ 1451 et seq.); vessels and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 3(8) of the Federal Boat Safety Act of 1971 (46 U.S.C. @ 1452(8)) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this subparagraph,

(H) drugs, devices or cosmetics (as such terms are defined in sections 201(g), (h) and (i) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. @ 321(g), (h) and (i))), or

(I) food. The term "food," as used in this subparagraph means all "food", as defined in section 201(f) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. @ 321(f)), including poultry and poultry products (as defined in sections 4(e) and (f) of the Poultry Products Inspection Act (21 U.S.C. @ 453(e) and (f)), meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act (21 U.S.D. @ 601(j))), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act (21 U.S.C. @ 1033)).

Except for the regulation under this chapter or the Federal Hazardous Substances Act (15 U.S.C. @ 1261 et seq.) of fireworks devices or any substances

> intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 2079 of this title to regulate any product or article described in subparagraph (E) of this paragraph or described, without regard to quantity, in section 845(a)(5) of title 18. See sections 2079(d) and 2080 of this title, for other limitations on Commission's authority to regulate certain consumer products.

As the text reflects, Congress chose to define the term "consumer product" generally, followed by the enumeration of specific exceptions to the term. It is plain that none of the specific exceptions, (although particular enough to exclude motor vehicles, tobacco, aircraft, and boats, among others), expressly address sprinklers, nor has Central contended otherwise. Thus present, is the issue of whether the general, albeit ambiguous, language defining "consumer product" applies to the sprinklers in question. As the statute does not provide an explicit answer, this question must be resolved in the context of a remedial statute intended to be broadly construed to effect its overarching purpose of protecting consumers from hazardous products. Reliance upon the remedial nature of the Consumer Product Safety Act is appropriate, especially where, as the Fifth Circuit aptly pointed out, the statute need not be read "as if it were a wonderfully constructed jig-saw puzzle, with each word having only one precise place, yielding, when assembled, an unambiguous picture." State Fair II at 1331. For the reasons which follow, I find that the sprinklers are "consumer products."

Central argues that, once installed, sprinkler heads become an integral part of the building and that, so merged, they are indistinguishable from the structure itself, just as framing, ventilation, and wiring become incorporated into the structure.[5] While it is accurate that *housing*

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[5]Central also expresses concern that if jurisdiction is found in this litigation over its *sprinklers*, given that the CPSC's authority to conduct investigations and engage in rulemaking is broader than its authority to seek adjudicated relief, the Commission would then have the

itself is not a consumer product and that the Act does not extend to every component part of a structure, particular components may be covered. In Anaconda, the D.C. Circuit explained that for a component to qualify as a consumer product it must be produced or distributed as a distinct article of commerce or at least as a component part of such a distinct article. Id. at 1319-1320. Excluded from coverage as component parts are those parts of a product that are not distinct, existing only at an intermediate stage of production. Id. at 1319. Although the Court was only facing whether *aluminum wiring systems as a whole* were "consumer products," it acknowledged that such systems are made up of a number of products, "some or all of which may qualify as 'consumer products' within the applicable definition." Id. at 1317.

In Kaiser Aluminum and Chemical Corp. v. The United States Consumer Product Safety Commission, 574 F.2d 178 (3rd Cir. 1978), ("Kaiser"), the Third Circuit, addressing arguments similar to those advanced here by Central, rejected the idea that the CPSA incorporates "all the arcane knowledge" as to when personal property becomes part of a building, as such an interpretation would exclude many common products such as furnaces, dishwashers and lighting fixtures. Instead, the Court focused upon the exposure of consumers to hazards created by a product, noting that even an undisputed industrial product " may lose its claim for exclusion if a significant number of consumers are thereby exposed to hazards associated with the product." Id. at 181.

There is no contention by Central that its sprinklers are not produced and sold as distinct articles of commerce. While Anaconda and Kaiser potentially arrived at different results on the

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implicit authority to regulate sprinkler *systems* themselves. It is sufficient to note that this specter is not in issue here.

issue of whether aluminum wiring *systems*[6] were consumer products, both rejected the idea that jurisdiction turns on whether a particular fixture becomes part of the house and therefore excludable from the Act's coverage. These Courts concluded that component parts may be "consumer products," and focused on the issue of whether consumers were exposed to hazards associated with the products.

Central also takes the position that the Act is limited to regulating hazardous products found in consumers' homes. Consistent with this assertion, Central maintains that the product must be available "off the shelf" at the retail level. In this regard Central notes that its product advertising is directed only to the relevant industrial trade and to the professional contractors within it.

Several federal courts have addressed the general definition of the term "consumer product." While the decisions have reflected some differences[7] among the courts in their

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[6]The Anaconda Court remanded the matter for further proceedings.

[7]In Walt Disney Productions v. U.S. CPSC, No. 79-0170-Lew-(Px), 1979 U.S. Dist. LEXIS 12996, (C.D. Cal 1979), the District Court, influenced by the fact that riders on an aerial tram attraction were only passive participants, concluded that the ride was not, as a whole, for the personal use, consumption, or enjoyment of consumers. The Court took the view that the Act only contemplated coverage over products for which it was practicable to obtain a sample and that it was concerned that an overly expansive reading would put the Commission at risk of spreading its limited resources too thin. Id. at ¶ 20-22. As noted, other courts have concluded that occupancy of such a ride and exposure to the hazards they present are sufficient to satisfy the "personal use, consumption or enjoyment" clause in the definition of "consumer product." State Fair of Texas, 481 F. Supp. 1070,1077 (N.D.Tx. 1979). The Fifth Circuit in State Fair II at 1334, also rejected the view set forth in Walt Disney and in Bell Enterprises, Inc. v. Consumer Product Safety Commission 645 F.2d 26 (10th Cir. 1981) that consumers need to "control" a product in order to satisfy the "consumer use" provision, noting that no legislative history supported this view and that consumers inability to control products in an institutional setting exposes them to the potential for greater risk of injury. Accepting, for the moment, the other concerns expressed by the California District Court in Walt Disney, it is noted that in this instance it would be

construction of the term, most have spoken about the broad purposes behind clauses (i) and (ii). In Anaconda the Court stated that, taken together, the clauses were designed to include the various ways "through which consumers acquire products and *are exposed to the risks of injury associated with those products*." Id. at 1320. (emphasis added). In Consumer Product Safety Commission v. Chance, 441 F. Supp. 228 (D.D.C. 1977) ("Chance") the Court held that the definition's phrase "in recreation or otherwise" is an independent basis of jurisdiction and accordingly rejected the argument that the definition is limited to household and school products holding that jurisdiction depends upon the extent to which consumers were exposed to the risks associated with the product. Id. at 231, 233. So too, the Court in ASG, in discussing the definitional phrase that a consumer product must be used or intended for use "in or around a permanent or temporary household or residence, a school or otherwise," held that the enumeration of locations and activities is *not* a limitation on jurisdiction, but rather an assurance of comprehensiveness. Id. at 1328. The Fifth Circuit, relying upon the language employed in the Act, the broad remedial policy underlying it and the legislative history, has reached the same conclusion. The Fifth Circuit rejects the argument that the phrase "in recreation" is tied to activity at a household, residence or school, by holding that each part identified in the definition is an independent basis for jurisdiction and, accordingly, that a consumer product is not necessarily a household product. Thus, the Court stated that the Act is broader than the sale of merchandise to consumers, that use of articles is sufficient and that a critical factor is the

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practicable to obtain a sample of the sprinklers in issue, and that with regard to the concern over limited resources, the Fifth Circuit has observed that it is not the courts' prerogative to second-guess agency decisions properly within their discretion and that the Commission is in the best position to decide what to accomplish within its budget. Id. at 1334.

consumer's exposure to a product, not the legal relation to it. State Fair II at 1328.

Quoting from the legislative history, the Anaconda Court also explained that the scope of the term "individual" within the phrase that the article in question must be one "capable of production for sale to an individual," by noting that "products which are primarily or exclusively sold to industrial or institutional buyers would be included within the definition of consumer product so long as they were produced or distributed for the ***use*** of consumers." Id. (emphasis added). The Court, aware of some indicators of a legislative intent to exclude "industrial products" from the Act's coverage, pointedly noted that subsection 3(a)(1)(A) does *not* accomplish this, concluding that even where a large portion of a product is distributed for industrial purposes, the product remains a "consumer product" as long as the sale *or* use is customary and more than occasional. Id. 1322. Thus, the Court cited with approval to Chance, which upheld CPSC jurisdiction over an amusement ride even though the ride was sold to an institutional buyer and not to consumers directly.

I concur with the weight of judicial opinion rejecting the narrow interpretation, urged here by Central, that the Act is limited to hazardous products found in residences. As these courts have concluded, the focus of the Act is directed towards consumers' exposure to hazards associated with products[8]. Thus, several courts have found that the Act applies to hazardous products completely unassociated with residences, such as the amusement park rides in Chance

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[8]For this reason the Court in U.S. v. One Hazardous Product Consisting of a Refuse Bin, 487 F. Supp 581 (D.N.J. 1980) also concluded that refuse bins found in apartment complexes, supermarkets, motels, retail businesses and other locations, were found to be "consumer products." The Court found that the term encompasses products whose distribution results in a significant number of **consumers being exposed to the hazard** associated with the product. Id. at 584. (emphasis added).

and State Fair II.[9]

I also note that it would be incongruous with the overall intent of this remedial legislation to conclude that a product whose entire function is safety related, and not specifically excepted from the definition's scope, is outside of the Consumer Product Safety Act's coverage. Further, even if for arguments sake it were momentarily accepted that, under Central's interpretation, the Act is limited to products found in residences, it would be untenable to conclude that Congress would have intended that protection from a hazardous product would be so incomplete, being limited to homes, when an identical or related model of the product, presenting the same hazard, would not be subject to the Act's reach merely because it was located in a hotel or other building. Thus, in the alternative, I conclude that at a minimum, once a product is found in a home, the ability to regulate it under the Act applies to all other locations where it is found, as Congress could not have intended such incomplete and irrational coverage of hazardous products.

Last, Central's arguments that OSHA and state and local regulation operate to preempt the CPSC are also rejected. As the D.C. Circuit observed in ASG, there must be actual, not potential, regulation of the product. The Court went on to note that OSHA's focus is providing a safe workplace and that this may be apart from producing articles that are themselves hazardous to consumers. Id. at 1328-1329. Further, as noted by the Third Circuit in Kaiser in addressing the role of local building codes in regulating consumer products, the "design and performance standards for components are now a matter of national concern." Id. at 181. So too, the Fifth

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[9]Central appears to want it both ways, by citing State Fair II with approval in part for its position that consumer "use" of a product requires interaction with it, accepting that the consumers' riding on amusements constitutes such interaction, while maintaining that such amusements are still outside of the Act's coverage as they are not part of consumers' homes.

Circuit observed that the Act intended a broad remedial purpose and that Congress determined that local government regulation of hazards posed by consumer products is inadequate. State Fair II at 1333.

II. Whether the Complaint Satisfies the Procedural Rules by Providing Reasonable Definiteness of the Charges

Central's arguments in this regard may be summarily resolved. The purpose of the complaint is to notify the respondent in a general way of the violation charged. Certainly the complaint accomplishes this. Central has been made aware that the Consumer Product Safety Commission asserts that its Omega brand sprinklers are hazardous in the sense that they have been alleged to malfunction in significant numbers. While the requirement that a "list and summary of documentary evidence supporting the charges" be provided, raises legitimate concerns, the rule does not call for a "comprehensive" summary and, in any event, this issue is moot as the documents themselves are being provided during discovery, a process that has already begun with intensity.

Central's suggestion that CPSC has some duty to explain the particular reason for the alleged failures is rejected. Even at hearing, Complaint Counsel has no duty to provide an explanation of how it is that the sprinklers malfunction. It is sufficient only to demonstrate that they *do* have a significant failure rate. Assuming that Complaint Counsel can demonstrate this, it would be Central's responsibility to figure out why it is happening, not that of the CPSC.

Accordingly, Central Sprinkler Corporation's and Central Sprinkler Company's Motion

to Dismiss the Administrative Complaint of the Consumer Product Safety Commission is DENIED.

So Ordered.

William B. Moran

William B. Moran
United States Administrative Law Judge

Dated: May 15, 1998
Washington, D.C.