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APR 15 1974

[redacted]
President
[redacted]
[redacted], Washington [redacted]

Dear Mr. [redacted]

I am writing in reply to your correspondence of March 2, 1974, addressed to Mr. Haythe, in which you inquired whether your client's automatic [redacted] machine falls under the jurisdiction of the Consumer Product Safety Act.

Section 3 of the Consumer Product Safety Act defines the term "consumer product" as meaning:

> "...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."

The term "consumer product" does not include any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer. (Section 3(a)(1)(A), 15 U.S.C. 2052 (a)(1)(A)).

The legislative history of the Act reveals 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 <u>use</u> of consumers. (H.R. Rep. No. 92-1153, 92nd Cong., 2d Sess. (1972)).

The legislative history also states:

> "It is not intended that true "industrial products" be included within the ambit of the Product Safety Commission's authority... [However,] [i]f the manufacturer or distributor of an industrial product fosters or facilitates its sale to or use by consumers,

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the product may lose its claim for exclusion if a significant number of consumers are thereby exposed to hazards associated with the product." (H.R. Rep. No. 92-1153, 92d Cong., 2d Sess. (1972)).

In view of the foregoing, if your client's automatic [redacted] machine is a true industrial product, it would not be subject to the jurisdiction of the Consumer Product Safety Commission. However, the manufacturer of a product has the responsibility to determine the distribution and use patterns of its products and to act accordingly. In our opinion, any doubts should be resolved in favor of considering a product to be a consumer product.

If you have any further questions concerning this matter, please let me know.

Sincerely,

Michael A. Brown
General Counsel

AHSchoem:epj:4/9/74
cc:
Executive Director
C. Boehne, OFC (for distribution to Field Offices)
Secretary
BCM
OSCA
A. Schoem
gc chron
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