DC 111

(107)

2 MAY 1974

Mr. [redacted]
Quality Engineering Manager
[redacted]
[redacted] Kansas [redacted]

Dear Mr. [redacted]

I am writing in response to your letter of April 19, 1974 in which you inquired whether various farm equipment manufactured by your company would be considered consumer products under section 3 of the Consumer Product Safety Act (15 U.S.C. 2052). That section defines "consumer product" as:

> " . . . 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 use 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, 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, 92nd Cong., 2d Sess. (1972)).

ADVISORY OPINION

In view of the foregoing, if your company's farm products are true industrial products, they 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.

You also inquired whether your company is subject to the reporting requirements of section 15(b) of the Consumer Product Safety Act. The manufacturers of all consumer products are subject to the reporting requirements of section 15(b) of the Act (15 U.S.C. 2064(b)).

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

Sincerely,

Original signed by
Michael A. Brown

Michael A. Brown
General Counsel

AHSchoem:tdr:4/30/74

cc: Secretary
Executive Director
Director, BCM
Director, OSCA
Director, OFC (for distribution to Area Directors)
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