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CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

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SAFETY COMMISSION

5 JUL 1974

Joseph D. Becker, Esq.
Edwards, Becker & Lynch, Ltd.
P. O. Box 1147
La Crosse, Wisconsin 54601

Dear Mr. Becker:

This is in response to your letter of May 23, 1974 in which you inquire as to the scope of the Consumer Product Safety Commission's jurisdiction under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.). You indicate that you are particularly interested in the Commission's jurisdiction over soft drink vending machines, reach-in beverage coolers, and commercial bar equipment.

In regard to soft-drink vending machines, we are enclosing a copy of an advisory opinion dated October 23, 1973 in which we expressed the opinion that the Commission has jurisdiction over coin-operated vending machines. We based that opinion on the fact that vending machines are produced or distributed for the use of consumers. In addition, it is our view that the Commission has jurisdiction over reach-in beverage coolers since these are also used by consumers. Insofar as commercial bar equipment is concerned, the question of the Commission's jurisdiction would depend on the use and distribution patterns of that product.

Section 3(a)(1) of the 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 legislative history of the Consumer Product Safety Act states in relevant part:

> ". . . the definition [of consumer product] is broadly stated to include any article which is produced or distributed for sale to or for the

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> use, consumption or enjoyment of a consumer in or around a household or residence, a school, in recreation or otherwise. (H.R. Rep. 92-1153, 92nd Cong., 2d Sess. 27 (1972)).

The legislative history of the Act also 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 also were produced or distributed for use of consumers (Id.) In addition, the legislative history states:

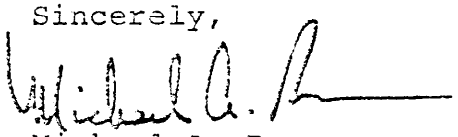
> "It is not intended that true 'industrial products' be included within the ambit of the Product Safety Commission's authority. . . [However] [i]f the manufacturer or distributor of an industrial product fosters or facilitates its sale to or use by consumers, the product may lose its claim for exclusion if a significant number of consumers are thereby exposed to hazards associated with the product." (Id.)

It is the view of this office that commercial bar equipment sold to or used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, would be considered consumer products and thus subject to the jurisdiction of the Commission. Commercial bar equipment used by individuals exclusively as part of a business within the scope of their employment, however, would not be considered, by this office, to be consumer products. However, these products could be subject to regulation by the Occupational Safety and Health Administration.

In any event, the manufacturer of a product has the responsibility to determine the distribution and use patterns of its products. In our opinion, any doubts should be resolved in favor of considering the product to be a consumer product.

Pursuant to your conversation with Alan Schoem of my office, we are also enclosing several copies of the Consumer Product Safety Act and regulations implementing sections 7 and 15 of the Act. Please let us know if we can be of further assistance.

Sincerely,



Michael A. Brown
General Counsel

Enclosures

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May 23, 1974

Consumer Products Safety
Commission
Washington, D. C.

Gentlemen:

Would you please send us what information you have relating to the coverage of the Consumer Products Safety Act. We are particularly interested in whether or not there has been any interpretation made as to whether the Act covers soft drink vending machines, reach-in beverage coolers, and commercial bar equipment.

Would you please advise us if there has been any such interpretation, and if not who we would contact to get such an interpretation.

Yours very truly,

EDWARDS, BECKER & LYNCH, LTD.

Joseph D. Becker

By
Joseph D. Becker
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