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ADVISORY OPINION

October 23, 1973

Mr. David E. Hartley
Public Health and Safety Counsel
National Automatic Merchandising
Association
7 S. Dearborn Street
Chicago, Illinois 60603

Dear Mr. Hartley:

By letter dated September 7, 1973, you requested an opinion as to the status of coin-operated vending machines under the Consumer Product Safety Act, 15 U.S.C. 2051 et seq.. It is the Commission's view that coin-operated vending machines fall within the meaning of "consumer product" as defined in section 3 of the Act and are therefore subject to regulation by the Commission.

In section 3(a)(1) of the Act, consumer product is defined 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...."

In regard to section 3(a)(1)(ii), you conclude that the interpretation of "personal use" and the singular noun "consumer" rather than the plural would appear to have the greatest bearing upon the status of vending machines. You contend that since vending machines are placed in schools, offices, industrial plants and other places of employment and public assembly for the use of all consumers present, and not for the individual or personal use of any one consumer, such articles would be outside the scope and intent of section 3(a)(1)(ii). We do not agree.

We refer you to section 1 of the Title 1 of the U. S. Code which states in relevant part:

> "In determining the meaning of any Act or resolution of Congress, words importing the singular number may extend and be applied to several persons or things."

In view of this, the fact that the singular of consumer is used in the definition of consumer product, rather than the plural, is of no significance. Furthermore, the Commission believes that Congress did not intend the phrase "personal use" to be construed narrowly or to limit the scope of the definition of "consumer product." In this regard, the legislative history of the Act reveals that the definition of consumer product is "broadly stated to include any article which is produced or distributed for sale to or for the use, consumption or enjoyment of a consumer in or around a household or residence, a school, in recreation or otherwise." [H.R. Rep. No. 92-1153, 92nd Cong., 2d Sess. 27 (1972)] The legislative history of the Act also states: "It is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use.... Also, 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." Since vending machines are, as you state in your letter, "for the use of consumers," the Commission concludes that vending machines are a consumer product, and could be regulated by the Consumer Product Safety Commission should the Commission determine that they present an unreasonable risk of injury.

Please let me know if I may be of further assistance.

Sincerely,

Michael A. Brown
General Counsel

NATIONAL
AUTOMATIC
MERCHANDISING
ASSOCIATION 7 S. DEARBORN ST., CHICAGO, ILLINOIS 60603 (312) 3

Serving the Vending / Foodservice management industry

September 7, 1973

Consumer Product Safety Commission
5401 Westbard Avenue
Washington, D.C. 20207

Gentlemen:

The National Automatic Merchandising Association is the national trade association for the vending and foodservice management industry. Among the 2300 members of N A M A are a large majority of the vending machine manufacturing companies located in the United States and, in addition, several foreign manufacturers.

This letter is to request an opinion about the status of coin-operated vending machines under the Consumer Product Safety Act of 1972. The inquiry is not directed toward vendible products such as food, beverages and tobacco products which are excluded from the Act.

Under Section 3(a)(1) of the Act, "consumer product" is defined in two ways. Under (i) of this paragraph, sale of the article to the consumer is the major qualification. Vending machines are not sold to the consumer. They are sold by the manufacturer to vending machine operating companies and others who fill, service and maintain the machines for the use of consumers. Vending machines would, therefore, seem not to be "consumer products" under Section 3(a)(1)(i).

Under Section 3(a)(1)(ii) sale to the consumer is not a qualification. Rather, "for the personal use ....of a consumer" is the operational phrase. The interpretation of "personal use" and the singular noun "consumer" rather than the plural would appear to have the greatest bearing upon the status of vending machines under this part of the definition.

Vending machines are placed in schools, offices, industrial plants and other places of employment and public assembly for the use of all consumers present; not for the individual or personal use of any one consumer. For this reason, such "articles" would also appear to be outside the scope and intent of Section 3(a)(1)(ii).

Continuing to the first exemption, Section 3(a)(1)(A), there is some confusion, in that "personal" has been omitted. However, the singular term, "consumer" remains. Vending machines would again seem to be excluded, since they are used by all members of the public rather than by "a consumer."

With respect to the other qualifications which appear in both Section 3(a)(1)(i) and (ii), vending machines are located by the vendor and used by consumers "in or around ....a school, in recreation, or otherwise." They are, of course, not used "in or around a permanent or temporary household or residence."

Having these facts and comments, we hope that the Commission will provide N A M A with an opinion which can be reported to the Association's machine manufacturer members.

In conclusion, it may be of interest to the Commission to note that the vending industry has for many years worked with Underwriters' Laboratories, Inc. (UL) in developing specific standards for vending machine safety and with the U.S. Public Health Service in standardizing vending equipment for purposes of public health and sanitation.

N A M A has sponsored a public health testing program for more than 16 years which is recognized throughout the country. We will be pleased to submit to the Commission the UL and N A M A standards and all testing program materials.

Sincerely yours,

David E. Hartley

David E. Hartley
Public Health and Safety Counsel

cc: G. Richard Schreiber
Richard W. Funk

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