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CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

JUL 29 1974

Mr. E. W. Clark, Supervisor
Engineering and Service
Atlantic Mutual Insurance Company
Box 150 Peck Slip Station
New York, New York 10038

Dear Mr. Clark:

Thank you for your June 5, 1974 letter to Richard Armstrong of the Bureau of Engineering Sciences reporting a potential danger from fire in certain [redacted] Copying Machines. It is most important that as many sources for discovering potential defects as possible become aware of our function. Therefore, your reporting of this problem is most gratifying.

Your letter poses a jurisdictional question. The Commission, under the Consumer Product Safety Act, has the authority to regulate consumer products. This Act defines "consumer product" as follows:

> "...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..." (Section 3(a)(1), 15 U.S.C. § 2052(a)(1))

The legislative history of this section clarifies Congress' intent not to exclude products that are not actually sold to consumers:

> "It is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use. Thus products which are manufactured for lease and products distributed without charge (for promotional purposes or otherwise) are included within the definition and would be subject to regulation under this bill." (House Interstate and Foreign Commerce Commission Report, House Report No. 92-1153, p. 27)

ADVISORY OPINION

Copying machines are often manufactured for lease, so they fall within the jurisdictional definition as long as they are produced or distributed for the use of consumers.

Additional language from the House Committee Report (p.27) is instructive on this point:

> "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.
>
> It is not intended that true 'industrial products' be included within the ambit of the Product Safety Commission's authority. Thus, your committee has specifically excluded products which are not customarily produced or distributed for sale to or use of consumers. The occasional use of industrial products by consumers would not be sufficient to bring the product under the Commission's jurisdiction. The term 'customarily' should not be interpreted as intending strict adherence to a quantum test, however. Your committee is aware that some products which were initially produced or sold solely for industrial application have often become broadly used by consumers. If 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." (Emphasis in original)

This legislative history appears to speak directly to the case of copying machines. Although still largely used in offices and industries, the use of copying machines by individual consumers has become extraordinarily widespread. They are customarily used by consumers for duplicating school reports, personal correspondence, employment resumes, newspaper and magazine articles, and other printed, typed, and written materials. Evidence of this is the presence of copying machines in schools, libraries, and commercial establishments that service individual consumers. Manufacturers have clearly fostered this widespread consumer use by modifying some copying machines to operate only when the proper amount of money is introduced. Therefore, we conclude that copying machines are presently 'consumer products' as defined by the Consumer Product Safety Act.

However, the Commission's jurisdiction is limited by section 31 of the Act which removes authority to regulate a consumer product if the risk of injury associated with that product "could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970..." The legislative history pertaining to this provision explains Congress' anticipation that the Commission would consider all aspects of the risk as well as the remedial powers available to Consumer Product Safety Commission and Occupational Safety and Health Administration (OSHA) under their respective laws. (Conference Committee Report, House Report No. 92-1593, p.38.) This requires that a factual finding precede any jurisdictional determination and the Commission would probably consider specific data before reaching such a determination.

Nevertheless, the facts on consumer use of copying machines mentioned above support a ruling that the Consumer Product Safety Commission does have sufficient jurisdiction to accept complaints such as yours and to investigate them if this is advisable. Both jurisdiction to investigate and jurisdiction to actually regulate copying machines would be concurrent with, or at least overlap the jurisdiction of OSHA in this area. Therefore, the Commission office that investigates potential product hazards will look further into this matter.

We will forward a copy of your letter and our response to the appropriate OSHA official. Further, we will forward both letters to the [redacted], as you agreed would be acceptable to you.

Sincerely,

Michael A. Brown
MAF

Michael A. Brown
General Counsel

cc: Mr. Alexander J. Reise
Associate Assistant Secretary for National Programs
Occupational Safety and Health Administration
U. S. Department of Labor
Washington, D. C. 20210

Mr. Ed Charkey
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HOME OFFICE
45 WALL STREET, NEW YORK 10005

June 5, 1974

Mr. Richard Armstrong
Director of the Bureau of
Engineering Science
5401 West Bard Avenue
Bethesda, Maryland 20016

RE: [redacted] Copying Machines

Dear Mr. Armstrong:

I telephoned Mr. Ed Charkey of the American Insurance Association today regarding four fires reported in [redacted] Copying Machines. Three of these fires occurred in a Plant in Tarrytown, New York, and caused the management finally to dispose of the machine. One of the cases occurred in a Life Insurance Company here in New York, the situation which smoked up a whole floor of the building but was extinguished with hand fire extinguishers.

In the Tarrytown Plant, there was such a concern that they asked us, the insurance company servicing this account and insuring Technicon what agency with a concern for consumer products could be advised of the situation. This caused me to talk with Ed Charkey of the AIA and he in turn gave your name to me as one who would be interested and concerned about the problem.

Frankly, I do not know the Model number of the machine that's involved. Perhaps you have other information and this will merely add to the data which you have on hand already.

In the case of the Life Insurance Company, Mr. Charkey was going to call the Director of Facilities there who specifically knew about the case and who incidentally did the fire fighting.

So the purpose of this letter is to advise you that there seems to be a fire problem in connection with [redacted] Copying Machines. More important is the [redacted] aware of this problem and what is being done to correct it.

If you have time to respond, we would appreciate hearing from you. Mr. Charkey is to advise us of his findings after his discussion with the Life Insurance Company.

Thank you for your attention.

Yours truly,

E. W. Clark