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CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

AUG 5 1974

Mr. Creighton White
Fireman's Insurance Company
3333 California Street
San Francisco, California 94119

Dear Sir:

Thank you for your recent correspondence addressed to Chairman Simpson concerning the brochure you plan to publish on the Consumer Product Safety Act. To assist in this effort, we are enclosing some explanatory materials which you may find helpful. Among these is a fact sheet describing the obligations of manufacturers, distributors and retailers under the Act, which may be of particular interest to you. In addition, we have placed your name on a mailing list to receive future Commission publications and news releases.

We regret, however, that we cannot grant your request that Commission staff review the brochure for errors or misstatements of fact. To permit review of materials such as these could easily result in an inundation of similar requests from firms and trade associations desiring to explain the Act to their respective constituencies. Thus, the time of a rather small staff would be spent in explications of the law--in effect rewriting the law in different language--rather than in carrying forward the intent of Congress that we guide the development of the standards necessary to reduce or eliminate unreasonable risks of injury to consumers.

This office is prepared to issue advisory opinions when specific questions arise concerning the interpretation of a section of the law or regulations, and the question could be considered one of general interest. In such a case, the advisory opinion is available to the whole public, not to a segment of it, and all who are affected are aware that compliance is based on the law and regulations as stated rather than on narrative descriptions of the law and regulations which have their origin outside the Consumer Product Safety Commission.

Please call upon us if we can be of further service. We appreciate your interest and concern for safety.

Sincerely,

Michael A. Brown
General Counsel

Enclosure

ADVISORY OPINION

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OFFICE OF THE SECRETARY
JUN 27 11 49 AM '74
CONSUMER PRODUCT
SAFETY COMMISSION

FIREMAN'S FUND AMERICAN INSURANCE COMPANIES
3333 CALIFORNIA STREET • SAN FRANCISCO, CALIFORNIA 94119

J. Creighton White, CPCU
ASSISTANT VICE PRESIDENT

June 24, 1974

Mr. Richard Simpson, Chairman
Consumer Product Safety Commission
1750 "K" Street NW
Washington, DC 20207

RE: Consumer Product Safety Act and the Retailer or Distributor

Dear Mr. Simpson:

As a service to our policyholders who are engaged in the distribution of consumer products, we have developed the attached, which will be published in a brochure format. We wish to call particularly to their attention the provisions of Section 15 and the administrative requirements of the Commission relating to that section as it affects them.

We would be very appreciative if some member of your staff would review this for any errors or misstatements we may have made. In addition, we would like to know if the Commission feels that any other comments or instructions might be appropriate. Thank you very much for your help.

Very truly yours,

Creighton White

CW:mis

Att.

THE CONSUMER PRODUCT SAFETY ACT
AND THE RETAILER OR DISTRIBUTOR

The Consumer Product Safety Act, which has been the law of the land since the fall of 1972, was drawn up with the following primary purpose: To protect the public from unreasonable risk of injury associated with consumer products. Although the Act concentrates on the designing and manufacturing of such products, retailers and distributors are also subject to its provisions.

Any product used primarily by the individual consumer around the household, in our around schools, in certain recreational activities, or in other ways, is covered by the terms of the Act. Industrial products are exempt.

As a retailer or wholesaler, the section of the Act which applies most pointedly to you is Section 15, or what is otherwise known as the "Substantial product hazard" section. You are required by the Act to make known to the Consumer Product Safety Commission the existence of any such hazard should you encounter one. The Commission may then see fit to ban from the marketplace the product involved.

With respect to such banned products, the Commission has announced regulations requiring the following:

a. Refund and Reimbursement: You are required to refund the purchase price of the product and to reimburse the purchaser for any reasonable transportation and shipping costs incurred in returning it.

b. Posting of Notice: If you have sold the banned article or substance at a retail establishment, you must, upon notice that the product is a banned hazardous substance, prepare and prominently display a list captioned:

"BANNED ARTICLES OR SUBSTANCE LIST"

(This list must contain the following information:)

1. Identification of the banned product.
2. Model or serial number(s) or other distinguishing features.
3. Name and address of the manufacturer.
4. Date notice was received from the manufacturer.
5. Nature of the hazards involved in use of the product.

Any banned article must be maintained on the list for at least 120 days from the date you, the dealer, receive notice of the Commission's action.

You, the dealer, must also prepare and prominently display in your retail establishment a notice under the following heading (with accompanying appropriate details):

"NOTICE OF REFUND PROCEDURES FOR
BANNED ARTICLES OR SUBSTANCES"

This, too, must be displayed for 120 days.

Further, if you (retailer, distributor, or wholesaler) obtain information which reasonably supports the conclusion that a consumer product

(1) fails to comply with an applicable product safety rule, or

(2) contains a defect which could create a substantial hazard,

you are obliged by the Act to inform the Consumer Product Safety Commission of such failure to comply or of such defect, unless you know for certain that the Commission has been adequately informed.

If you would like to know more about the Consumer Product Safety Act, just contact your Fireman's Fund American agent or broker. He can obtain a booklet for you from our Loss Control Division which fully describes these and all other aspects of the Act. You can also depend on our Loss Control Division for help with any problems you may have with respect to the marketing of safe products.

Here are a few helpful hints:

1. Carefully examine the products you handle, because as a merchandiser, you are responsible for failure to discover readily observable defects and hazards.

2. Seek competent legal advice on the wording of instructions, labels, warnings, or warranties if you repackage or assemble any products. When you perform such operations, your responsibility for the quality of the products you handle can be as great as that of the manufacturer.

3. In describing to a customer the uses of a product, be sure to warn against potential misuses, too. Make certain your sales personnel follow this practice, also, especially if they suggest specific products or tools for specific uses. You, and they individually, could be held legally liable for improper or incomplete advice which results in injury.

4. Seek advice from your attorney regarding "hold harmless" agreements and what recourse you may have in the event of a lawsuit. You may have recourse against your supplier - if you know who your supplier is. Can you identify the supplier of all the products or components you handle? Even more important, is your supplier one who will defend you in the event of a suit for alleged product failure? With some imported products, it may be impossible to enjoin the manufacturer in defense against a product claim.

5. Keep adequate records. In case of a product recall, you must determine at once whether you have any of the hazardous or contaminated products in stock so as to remove them immediately from the customer area. Failure to do so could involve you in litigation. If you handle larger products of potentially great hazard (e.g., motor vehicles or major appliances) you should keep a record of purchasers, readily available, to assist in recall efforts.

6. Guard against accidental contamination of foodstuffs. For example, packages of dry cereals, flour, sugar, or similar products can soak up spilled liquids such as pesticides, causing serious illness. Glass fragments in bulk candy can cause major incidents.

This list is by no means all-inclusive. There are many other concerns with respect to product safety which you, the merchandiser, may want to know more about. For the answers, get in touch with your Fireman's Fund American agent or broker. Together with a representative of our Loss Control Division, he will be more than happy to help you with any aspect of this subject specifically relevant to your business.