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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

OCT 1 0 1974

C. M. Westerman
Senior Vice President
Warner Insurance
4210 Peterson Avenue
Chicago, Illinois 60646

Dear Mr. Westerman:

This is in response to your January 23, 1974 and August 20, 1974 letters concerning various jurisdictional questions related to the Consumer Product Safety Act. We are sorry that your original letter remained unanswered for so long, and that a follow-up letter was necessary.

Your first general question involves the jurisdictional relationship between this Commission and the Occupational Safety and Health Administration (OSHA). As you have indicated, the Commission regulates consumer products while OSHA regulates the manner in which certain products are used in employment situations. A product could well fall within both areas of jurisdiction. When the Commission exercises its jurisdiction, all products are affected. On the other hand, OSHA's jurisdiction affects only those actually used in a covered work situation. Since overlapping jurisdiction does exist in some areas, both agencies attempt to avoid practical problems through close cooperation.

The balance of your questions involve jurisdiction over food containers. The Consumer Product Safety Act places certain responsibilities on distributors and retailers, as well as on manufacturers, and these are not necessarily linked to error or negligence that causes hazards. The reporting requirements of section 15(b), for example, are imposed on those in all three categories, independent of fault for creating the substantial product hazard.

ADVISORY OPINION

In some situations a food processor, as a distributor, is responsible for defects in containers that he fills with his product. We are currently working with the Food and Drug Administration (FDA) to resolve exactly what actions regarding food containers will be taken by which agency. We believe that the Commission has jurisdiction over food containers at the manufacturing and distributing stages, as well as when they are in the hands of consumers. The FDA considers containers to be food within its jurisdiction in certain situations where dangerous substances migrate from the container into the food.

We enclose a copy of our Consumer Product Hazard Index, as you requested. We trust that this letter has been responsive to your questions, and we apologize again for the delay.

Sincerely,

Michael A. Brown
General Counsel

Enclosure

extra copy

January 23, 1974

U. S. Consumer Product Safety Commission
Washington
D. C. 20207

Gentlemen:

We would like to have a copy of your Consumer Product Hazard Index, referred to in the December issue of "Neiss News".

We note also in that publication a list of the first product categories in the Index, among them a category entitled "Stairs, Ramps and Landings, Indoors and Outdoors". The thought occurs to the writer that OSHA appears to have jurisdiction over such things in workplaces and wonders how your interest and theirs may dovetail. For example, OSHA specifies a certain form of railing around elevated work locations. Presumably their specifications and those which you might ultimately propose would not be in conflict. On the other hand, your interest may lie only in the area of manufacturers who sell or install such items. Just what is the situation?

Similarly and as regards the categories "Glass Bottles and Jars" and Cans (Inc. Self-Openers and Resealable Closures)", is your interest limited to the manufacturer of such items or would it extend to the food processor, for example, who uses such items, fills them with his product and seals them with caps, covers, etc.? The empty jar or can is the finished product insofar as the jar or can manufacturer is concerned but the filled and sealed product is the finished product of the food processor and is the product that ultimately gets to the retail consumer. A defect in the container arising from the container manufacturer's error and which causes injury to the consumer would presumably be the container manufacturer's responsibility and would be treated as such by CPSC, but if the defect causing injury resulted from the food processor's use of the container, resulting injuries would be chargeable to the food processor. Is this your intent? Further, should a defect in a container result in contamination of the contents, such as food, which resulted in injury to a consumer, we presume the Food & Drug Administration would take jurisdiction. Is this correct?

We realize that the answers to these questions may not be simple and may not yet be formulated but would appreciate your current thinking in the matter.

Yours very truly,

C. M. Westerman
Senior Vice President

CMW:hg

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August 20, 1974

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CONSUMER PRODUCT
SAFETY COMMISSION

Mr. Richard O. Simpson
Chairman
Consumer Product Safety Commission
1750 K Street N.W.
Washington, D. C. 20207

Dear Mr. Simpson:

I wrote a letter to the Commission on January 23, copy attached, which remains unanswered and it occurs to me it may have been misdirected. I would appreciate your directing it to the proper person who might be able to give me an opinion on the questions that were raised in my letter.

Yours very truly,

C. M. Westerman

C. M. Westerman
Senior Vice President

CMW:hg

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