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RECEIVED
OFFICE OF SECRETARY
OCT 18 2 47 PM '74
CONSUMER PRODUCT
SAFETY COMMISSION

[redacted]

Dear [redacted]

This is in response to your recent letter to Commissioner Barbara H. Franklin regarding children's Halloween costumes. In that letter you asked what kinds of laws would apply to these costumes.

The Flammable Fabrics Act which is administered by this Commission, prohibits the sale, manufacture for sale or offering for sale of any product, fabric or related material unless it conforms to a flammability standard which may be applicable. The standard which would apply to Halloween costumes is Commercial Standard 191-53. (Copy enclosed). This standard applies to items of wearing apparel and to fabric intended or sold for use in wearing apparel.

CS 191-53 prescribes a test for determining flammability. Although this test is not mandatory, all items of wearing apparel must meet the Standard. In addition, a supplier may be asked by a customer to supply a guarantee that the fabric or item of wearing apparel he sells meets the test requirements of CS 191-53. The Flammable Fabrics Act makes it unlawful for a person to furnish a false guaranty. Thus a person who purchases fabric to be manufactured into wearing apparel may ask the fabric supplier to guarantee that the fabric meets the test requirements of CS 191-53. When the finished product is sold by the manufacturer to a wholesaler or retailer, the manufacturer may be asked to guarantee that his product meets the test requirements of CS 191-53. Although neither the fabric supplier or the manufacturer of wearing apparel is required to issue a guaranty, the customer of either may prefer to do business elsewhere.

Your letter states that your firm "is creating" different categories of children's costumes. It is unclear from this description whether the costumes are to be manufactured or whether ready-to-wear components will merely be assembled into packages. In either case, we hope that this discussion will provide the guidance you need, either as a manufacturer or a retailer. If you need further information, you may wish to contact the Commission's Los Angeles area office, as follows:

Roger C. Burrows
Acting Area Director
3660 Wilshire Blvd., Suite 1100
Los Angeles, California 90010
Phone: (213) 688-4334

We would suggest in addition, that you contact the appropriate State official to determine whether California flammability law would affect your project.

Sincerely,

Original signed by
Michael A. Brown

Michael A. Brown
General Counsel

OCT 1 1974

[redacted]

September 24, 1974

Ms. Barbara Hackman Franklin
Consumer Products Safety Commission
1750 Kay Street, N.W.
Washington, D.C.

Dear Ms. Franklin:

I am employed by a small costume company and we are considering trying to make some extra money for the company by taking advantage of the demand for costumes during Halloween. What my company is interested in doing is creating three different packages of children's costumes falling into the catagories of 1)make-it-yourself, 2) rentals, and 3) packages of children's costumes ready-made. Aside from the fact that we are trying to find out locally if children's costumes must be fire-proofed, we are very eager to find out what if any legal stipulations are in order. Can you possibly advise us regarding any legalities which we must follow?

Please know how much we shall appreciate any assistance you might have to offer. Thank you for your time and consideration.

Sincerely yours,

[redacted]

BSC/fc

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TOWSON OFFICE
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September 26, 1974

RECEIVED
Consumer Product Safety Commission
Office of the General Counsel

Mr. Michael Brown
Office of General Counsel
Consumer Product Safety Commission
1750 K Street, N.W.
Washington, D. C. 20207

Dear Mr. Brown:

The purpose of this letter is to determine the Commission's view as to the applicability of the notification requirement of §15(b) of the Consumer Product Safety Act and the regulations promulgated thereunder to the following situation.

Prior to December 31, 1970, a manufacturer produced 36,000 units of a durable consumer product of which 29,600 were sold to distributors. In March, 1971, the manufacturer discovered that the customer's failure to maintain the product in adjustment combined with either abnormal use or misuse of the product could introduce stresses that would cause the product to malfunction with the possibility of serious injury to the user. The manufacturer instituted a recall program which included a press release, letters sent by certified mail, return receipt requested, to known consumer purchasers (identified through guaranty registration cards returned to the manufacturer), letters by certified mail to 500 distributors known to have purchased the product (including a request that they notify their retailers), letters by certified mail to the 35,000 retailers who were then members of the appropriate national retailers association, and retention and modification of units in the manufacturer's inventory. An estimated 46% of the known consumer purchasers of the product responded and their units were either exchanged or repaired. An estimated 61% of the units in the possession of distributors and retailers were returned or repaired. Additionally 6,400 units which were in the manufacturer's inventory were modified resulting in the correction of 62% of the 36,000 units produced. Therefore, at present there are an estimated 13,000 units outstanding either in the distribution system or in the hands of consumers.

Second and third letters were sent by first-class mail to consumer purchasers who failed to respond to the prior mailing. Response to the third mailing was negligible. Sixteen incidents of malfunction of which nine resulted in personal injury were reported prior to the initiation of the recall program; thirteen more incidents of which ten resulted in personal injury were reported prior to May 14, 1973; and one incident, which involved personal injury, was reported after May 14, 1973.

There has been no significant activity under the recall program since December 1, 1973. However, the manufacturer has received 12 guaranty registration cards within the past year which may indicate that a few units are still being sold. Letters are sent promptly to such purchasers requesting them to exchange the units.

We have noted the Commission's comments accompanying its final regulation and your opinion of April, 1974 to Emerson Electric Co. (Advisory Opinion 101) regarding events occurring prior to the activation of the Commission. It is not clear to us whether the rationale of the comments and opinion extend to the situation described above, since production of the product had stopped and the recall program had reached its effective limit before the effective date of the Consumer Product Safety Act as well as before activation of the Commission. In light of the foregoing action taken by the manufacturer and assuming for this purpose that the product may constitute "a substantial product hazard" within the meaning of the Act, should the matter be reported under Section 15(b)?

Yours truly,

Lowell R. Bowen

LRB/go