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Lewe B. Martin, Esquire
Pope, Ballard & Loos
700 Brawner Building
888 Seventeenth Street N.W.
Washington, D.C. 20006

Dear Mr. Martin:

This is in response to your September 6, 1974 letter requesting an advisory opinion on three aspects of our bicycle regulations (16 CFR, Part 1512).

Your letter first asks which, if any, provisions of the Consumer Product Safety Act (CPSA) apply to manufacturers, importers, distributors, and retailers of bicycles in light of the Commission's regulation of bicycles under the Federal Hazardous Substances Act (FHSA). As you know, the Commission is required to utilize the FHSA, the Poison Prevention Packaging Act of 1970, and the Flammable Fabrics Act whenever the provisions of those acts are sufficient to eliminate or reduce a risk of injury associated with a consumer product (CPSA, section 30(d)). In regulating bicycles under the FHSA, the Commission declined to determine that the FHSA provisions were not sufficient to reduce those risks addressed by the bicycle regulations. A petition requesting such a determination was denied by the Commission. Future risks, however, might well support a section 30(d) finding that would enable the regulation of bicycles under the provisions of the CPSA.

Aside from regulations specifically concerning bicycles, there are areas where bicycle manufacturers, importers, retailers, and distributors could fall within provisions of the CPSA. At the present time, the regulations for the reporting of "substantial product hazards" under section 15(b) of the CPSA (16 CFR, Part 1115) apply to all acts administered by the Commission. In promulgating these regulations, the Commission made the required determination under section 30(d) in the

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September 6, 1974

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SEP 9 1974
Consumer Product Safety Commission
Office of the General Counsel

Mr. Michael A. Brown
General Counsel
Consumer Product Safety Commission
1750 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Brown:

Oh behalf of the Bicycle Wholesale Distributors Association, a nation wide trade association, may I request an advisory opinion concerning the Establishment of Safety Standards for Bicycles, 16 CFR, Part 1512. I would like to know if the provisions of the Consumer Product Safety Act (with the exceptions of sections 30(a) and 30(d)) have any application to bicycles. In the Federal Register of July 16, 1974, the Commission promulgated standards for bicycles under the authority of the Federal Hazardous Substances Act. Bicycles not meeting these requirements are considered banned hazardous substances.

Since the provisions of the Consumer Product Safety Act differ in many important respects from the Federal Hazardous Substances Act, the question arises whether bicycles will be regulated only under the FHSA or under the FHSA and the CPSA. Specifically, do any of the requirements, or penalties, or enforcement provisions of the CPSA apply to bicycle manufacturers, importers, distributors and retailers? Or will bicycle manufacturers, importers, distributors and retailers by regulated solely under the provisions of FHSA?

I have had an opportunity to examine Advisory Opinion 131, dated August 7, 1974, concerning imported bicycles. We respectfully request further amplification of this opinion. Specifically, we are concerned where a U.S. wholesale distributor of bicycles enters imported bicycles into a State of the United States prior to January 1, 1975;

preamble to the regulation published in the Federal Register (39 F.R. 6061-69, February 19, 1974). Similarly, the Commission has proposed that the regulations for recordkeeping (39 F.R. 31916-18, September 3, 1974) under section 16 of the CPSA be applicable to manufacturers, importers, private labelers, and distributors of products affected by any of the "transferred acts" as well as by the CPSA. The Commission made an initial section 30(d) determination in the preamble of the proposed regulations. In every case, a section 30(d) determination would precede the application of CPSA provisions to a transferred act.

Your specific question in this area focuses on the use of the penalty and enforcement provisions of the CPSA for bicycles. Because our current bicycle regulations are issued under the FHSA, only the provisions of that Act would be used for enforcement and penalty purposes.

The second question raised by your letter references our August 7, 1974 Advisory Opinion #131. Under section 2(b) of the FHSA, "interstate commerce" includes "commerce between any State or territory and any place outside thereof...." As used in the bicycle regulation, therefore, interstate commerce refers to the importation of bicycles as well as the shipment between states within the United States. Regardless of any subsequent movement, any bicycle which arrives in a United States port of entry is deemed to have been introduced into interstate commerce on its date of entry.

Your final questions refer to the applicability of the FHSA repurchase regulations (16 CFR section 1500.202) to the imported bicycle pedals which certain U.S. wholesale distributors have in inventory. Please note that the pedals would not be hazardous substances under the FHSA because the bicycle regulations apply only to "already-assembled" or "ready-for-assembling" bicycles. To respond to your more general concerns, in those situations where imported products are found to be banned under the FHSA, any subsequent shipments of those products would be denied entry into this country. However, it is unlikely that any products of a foreign manufacturer which are not banned would be denied entry. As required by the repurchase regulations, the importer of a banned article, as a "manufacturer," must bear any financial loss.

For your information, the regulation was originally finalized to apply to affected products introduced into interstate commerce on or after January 1, 1975, but that date will be extended and the Commission will soon propose an effective date of May 1, 1975.

Sincerely,

Original signed by
Michael A. Brown

Michael A. Brown
General Counsel

moves the bicycles intrastate from the P.O.E. to another city prior to January 1, 1975; and then ships the said bicycles interstate after January 1, 1975. Does the compliance section (16 CFR §1500.18(a)(12)) apply at the date of entry at fhe P.O.E. or does it apply at the date of shipment from one of the United States to another. It would appear from Advisory Opinion 131 that the date of entry at the P.O.E. would be determining, however we would appreciate being absolutely clear in this regard.

By definition, 15 USC 1274, the term "manufacturer" includes an importer for resale. Many wholesale distributors of bicycles and bicycle parts are importers of these substances. We request a further opinion as to how the Commission would consider the refusal of admission of imported bicycles or bicycle parts. Several U.S. wholesale distributors are confronted with the situation where they have in inventory imported bicycle pedals which have been determined to be hazardous substances and are subject to repurchase. Pursuant to 16 CFR §1500.202 a wholesale distributor of bicycle pedals produced by a domestic manufacturer would be entitled to reimbursement from said manufacturer in a repurchase situation. If the U.S. distributor, who is the importer of a repurchase substance, fails to be reimbursed by the foreign manufacturer, will the Commission move through the Secretary of the Treasury to refuse further admission of imports from the said foreign manufacturer until reimbursement is made?

Very truly yours,

Lewe B. Martin

General Counsel
Bicycle Wholesale Distributors
Association

LBM/hbb