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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

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This is in response to your October 12, 1974 letter concerning the product you are developing to eject tennis balls from a machine. We believe the Commission would have jurisdiction over this product under either the Consumer Product Safety Act (CPSA) or Federal Hazardous Substances Act (FHSA).

Since, as you state, this product would be used by a consumer in his garage or basement, it would be considered a consumer product which the Commission could regulate under the Consumer Product Safety Act (copy enclosed). Please note that section 15(b) of the CPSA requires manufacturers, distributors, and retailers of any consumer product to immediately report to the Commission defects in products that could create substantial hazards. Standards or regulations issued under the CPSA in the future could impose additional obligations.

Another act that this Commission administers, the Federal Hazardous Substances Act (copy enclosed), provides jurisdiction over toys and other articles intended for use by children. The Commission interprets the FHSA to provide jurisdiction over a toy or other article actually used by both children and adults. Neither the FHSA nor its legislative history makes entirely clear at what ages a person is or is not a child for the purposes of toy regulation.

The 1969 amendments to the FHSA which added the authority over toys were the subject of hearings before a Senate subcommittee. Those hearings show that "children" was intended to be a flexible term and that "the type of danger presented and the ability of that individual using the object to appreciate the danger and to avoid it" would affect interpretation of the FHSA (April 16, 1969 Hearings before the Consumer Subcommittee of the Committee on Commerce, United States Senate, 91st Cong., 1st Sess., p.34).

ADVISORY OPINION

Manufacturers must make the initial determination of whether or not a toy is covered by the Federal Hazardous Substances Act. Use patterns and marketing practices, rather than the mere intention of the manufacturer, would be the proper factors to be considered on the question of usage by children. Please note that when the Commission makes its determination of whether or not a particular product is covered, the manufacturer could already be in violation of the FHSA. For this reason, we believe that any doubts should be resolved by a finding that FHSA jurisdiction does exist.

If your tennis ball ejector presents a mechanical, electrical, or thermal hazard, it is automatically classified as a "banned hazardous substance" according to section 2(q)(1)(A) of the FHSA and therefore cannot be introduced into interstate commerce without violating this Act.

In addition, you must decide whether toy regulations promulgated by the Commission apply to your product and offer the further possibility that the product is banned under the Hazardous Substances Act. The regulation covering propelled objects and launchers, to which you refer in your letter, has not yet been proposed. If you monitor the Federal Register or otherwise keep up with our activities, you will see this regulation first as a proposal and then as a final rule before it is to take effect. Other toy regulations, none finalized as yet, concern sharp edges, sharp points, and small parts. If you are not sure whether a specific regulation, as finalized in the Federal Register, applies to your tennis ball ejector, you could write to us requesting an advisory opinion at that time.

We hope that this is responsive to your letter.

Sincerely,

Michael A. Brown
General Counsel

Enclosures

October 12, 1974

Mr. Michael Brown
General Council
Consumer Product Safety Commission
1750 K Street
Washington, D.C. 20006

Dear Mr. Brown:

We are developing a product designed to eject tennis balls from a machine and to be used in the consumer's garage or basement. It is our understanding that there is legislation pending for projectile regulations as well as several other areas. Would you believe that this type product is intended to be covered by these regulations? If so, how soon might these regulations be adopted?

Very truly yours,

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DAE:sb

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