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Secretary
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OFFICE OF THE SECRETARY
Nov 18 2 40 PM '74
CONSUMER PRODUCT
SAFETY COMMISSION

NOV 14 1974

Honorable Jack Kemp
House of Representatives
Washington, DC 20515

Dear Mr. Kemp:

This is in response to your letter of October 10, 1974, to Michael A. Brown, General Counsel of the Consumer Product Safety Commission. In that letter you ask whether the Consumer Product Safety Act covers fire extinguishers and what safety standards have been established for these products.

In the view of the General Counsel, fire extinguishers are consumer products. Section 3(a)(1) of the Act (copy enclosed), defines a consumer product to include "...any article or component part thereof, produced or distributed (1) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise". A safety standard has not been promulgated for fire extinguishers, however, nor has the Commission taken action to develop such a standard at this time.

Enclosed for your information is a copy of the product hazard index issued in September 1973 which indicates that, of 369 products surveyed, fire extinguishers rank 243 in frequency and severity of injuries. The product hazard index for fiscal year 1974 (not yet ready for publication) indicates that they are number 232 and that nationwide, there were 703 estimated injuries associated with fire extinguishers. Also enclosed for further background information is a Hazard Analysis on fire extinguishers published by the Commission's Bureau of Epidemiology in January 1974.

Although the product hazard index, by itself, would not determine which products are to be regulated, it is an important factor in determining the priority accorded to product evaluation undertaken prior to promulgating mandatory safety standards or bans. Also helpful in determining regulatory priority would be the volume of consumer complaints and defect notification reports referred to the Commission.

ADVISORY OPINION

Such reports are required by Section 15(b) of the Act from manufacturers, distributors and retailers who have information on product defects which could create substantial product hazards. The Commission's Division of Product Defect Identification has not, to date, received any reports on fire extinguishers.

Another instrument to help determine possible action by the Commission is provided by section 10 of the Act which permits any interested person or group to petition the Commission to issue, amend or revoke a consumer product safety rule. A petition may be filed by any individual or organization citing relevant information concerning a particular product hazard, and asking the Commission to take action concerning the hazard. The Commission may hold a public hearing or other proceeding or investigation before granting or denying the petition if it believes these steps would be appropriate.

Other than the promulgation of consumer product safety standards, the Commission has available the following wide range of remedies to implement the purposes of the Consumer Product Safety Act. For the purposes of public health and safety, section 16 of the Act provides that Commission employees or agents may inspect establishments such as factories and distribution centers which handle consumer products, and provides also that records at such establishments pertaining to consumer products may be inspected. Section 15 of the Act provides that if the Commission determines after a hearing that a consumer product presents a substantial product hazard as that term is defined in section 15, the Commission may order that the product be repaired or replaced, or that its purchase price be refunded. If a consumer product presents an unreasonable risk of injury and no feasible standard appears to exist which can protect the public, section 8 of the Act provides that the Commission may, after following specified procedures, issue an order declaring the product to be a banned hazardous product. Section 12 of the Act provides the Commission with authority to have an imminently hazardous consumer product removed from the market by seizure, upon filing an action in a U. S. District Court.

To return to the matter of jurisdiction, the question you raise appears to have two parts. First, as we stated, it is the view of our General Counsel that a fire extinguisher is a consumer product. Thus, if a fault in design, for example, resulted in a product with sharp points or sharp edges which could cause injuries such as lacerations or contusions, the Commission could take action to develop a standard to reduce or eliminate such injuries. Second, the Office of the General Counsel believes the Commission would have jurisdiction to regulate products such as fire extinguishers that may not perform as they are

intended, since the quality of such performance may be closely related to the injury from fire which the products are supposed to prevent.

Accordingly, Counsel advises that the Commission has jurisdiction to regulate the effectiveness of safety-related products such as fire extinguishers.

Sincerely,

ORIGINAL SIGNED BY
BARBARA A. LUDDEN

Mrs. Barbara A. Ludden
Director of Congressional Relations

JACK KEMP
38TH DISTRICT, NEW YORK

WASHINGTON OFFICE:
CANNON HOUSE OFFICE BUILDING
AREA CODE 202: 225-5265

ADMINISTRATIVE ASSISTANT:
RANDAL TEAGUE

EXECUTIVE ASSISTANTS:
HARRY W. CLARK
LOU ROTTERMAN

Congress of the United States
House of Representatives
Washington, D.C. 20515

DISTRICT OFFICE:
1101 FEDERAL BUILDING
111 WEST HURON STREET
BUFFALO, NEW YORK 14202
AREA CODE 716: 842-5976

COMMITTEES:
EDUCATION AND LABOR
SMALL BUSINESS

DISTRICT REPRESENTATIVE:
EDWARD J. RUTKOWSKI

October 10, 1974

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

Dear Mr. Brown:

It has recently come to my attention that several brands of fire extinguishers currently on the market may not meet minimal standards of safety.

I would like to know if, in your interpretation, fire extinguishers are covered in the language and intent of the Consumer Product Safety Act, establishing your Commission. If this product is covered, I would appreciate a clarification of what safety standards have been established, and how they are being enforced.

In the event that safety standards have not, to date, been established for this product line, I would like to stress the immediacy of the need to establish such standards.

Home fires claim thousands of lives and millions of dollars of property damage every year. It is a matter of grave concern to me that, reaching for a fire extinguisher during the panic of a home fire, the average American many grab a flawed product, incapable of performing the property and life-saving functions for which it is advertised.

I will be awaiting your comments. Thanking you in advance for your consideration, I am

Sincerely,

Jack Kemp

JK:mre

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