U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

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OFFICE OF SECRETARY RECEIVED MAR 13 3 45 PM '75 CONSUMER PRODUCT SAFETY COMMISSION

No response - 6a/6b cleared
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Mr. John L. Steele, Jr.
Assistant Secretary
General Radio
300 Baker Avenue
Concord, Mass. 01742

Dear Mr. Steele:

This is in response to your letter of February 21, 1975 describing the electronic stroboscope marketed by your firm, and the possible electric shock that might arise from contact of the stroboscope's range switch shaft with the printed circuit board which could result in a potential of 250 volts dc.

You ask two questions: first, whether the uses for which the stroboscope [illegible] intended as set out in descriptive literature you enclosed, would suggest that the stroboscope could be classified as a consumer product.

"Consumer product," as defined by section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)), means:

> [A]ny article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include- (A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer....

ADVISORY OPINION

We believe that Congress did not intend that the term "consumer product" be construed narrowly to limit the scope of the Act. The House of Representatives Interstate and Foreign Commerce Committee Report specifically states that the definition is "intended to vest omnibus product safety authority in a single Federal agency" and "is broadly stated to include any article which is produced or distributed for sale to, or for the use, consumption, or enjoyment of a consumer in or around a household or residence, a school, in recreation, or otherwise. "(H.R. Rep. No. 92-1153, 92d Cong., 2d Sess. at p. 27)

The fact that a product is not sold directly to consumers would not necessarily preclude the Commission from exercising jurisdiction over such product. In this regard, the legislative history of section 3(a)(1) states:

> It is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use. Thus products which are manufactured for lease and products distributed without charge (for promotional purposes or otherwise) are included within the definition and would be subject to regulation under this bill. Also, products which are primarily or exclusively sold to industrial or institutional buyers would be included within the definition of consumer product so long as they were produced or distributed for use of consumers. (House Committee Report at p. 27)

Although the definition of "Consumer Product" excludes "any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of a consumer," that exclusion is not a blanket one. The same legislative history explains the exclusion as follows:

> It is not intended that true "idustrial products" be included within the ambit of the Product Safety Commission's authority. Thus, your committee has specifically excluded products which are not customarily produced or distributed for sale to or use of consumers. The occasional use of industrial products by consumers would not be sufficient to bring the product under the Commission's jurisdiction. The term

> "customarily" should not be interpreted as intending strict adherence to a quantum test, however. Your committee is aware that some products which were initially produced or sold solely for industrial application have often become broadly used by consumers. If the manufacturer or distributor of an industrial product fosters or facilitates its sale to or use by consumers, the product may lose its claim for exclusion if a significant number of consumers are thereby exposed to hazards associated with the product. (House Committee Report at p. 27)

In most instances the manufacturer of a product has the initial responsibility for determining whether the distribution and use pattern of his product would result in its falling within the jurisdiction of the Consumer Product Safety Act. We recommend that any jurisdictional doubt be resolved by considering a product to be a consumer product.

In applying these general rules to the uses of your firm's stroboscope, we refer again to the pamphlet you enclosed describing how the product can be used in different circumstances for different purposes. For example, in the field of education, the principles of stroboscopy can be illustrated; certain laws of physics and studies of velocity and energy transfer can be helped by use of the stroboscope. In the field of photography, certain high speed phenomena such as glass fracture or the impact of a bullet can be subjected to detailed examination. In these two areas at least, it could be said that the stroboscope has applications which, in the opinion of this office can classify it as a product, "for the personal use, consumption or enjoyment of a consumer in or around a...household or residence, a school, in recreation or otherwise..."

You also ask whether your description of the defect found in the stroboscope could be classified as a substantial hazard under the Consumer Product Safety Act. The product defect you describe, which may have the potential for serious electric shock, appears to fall within the description of substantial hazard at section 15(a)(2) of the Act, as a:

> "Product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk or otherwise) creates a substantial risk of injury to the public."

We understand that you have already had some contact with the Commission's Office of Product Defect Identification concerning this matter. We suggest that you communicate further with them for appropriate guidance on the steps to be taken with reference to the defective stroboscope.

The Commission appreciates your concern for safety.

Sincerely,

Michael A. Brown
General Counsel

General Radio

300 BAKER AVENUE, CONCORD, MASSACHUSETTS 01742
Telephones: 617/369-4400 (Concord) • 646-7400 (Boston)
TWX: 710 347-1051 • Telex: 92-33-54

February 21, 1975

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

Dear Mr. Brown:

I talked yesterday with Mr. Dennis Trietch of the Commission's Office of Product Defect Identification. He suggested that I write to you for your opinion of whether the Commission would have jurisdiction over the matter described below.

The Product

General Radio's Type 1531-AB electronic stroboscope is described on Page 9 of the enclosed booklet. The applications for it or other stroboscopes are listed on Page 2 of this booklet. The current price of this instrument is $445.00. It is sold directly by us and through some industrial equipment distributors.

Does any of this information suggest that the Type 1531-AB electronic stroboscope could be classified as a "consumer product" under the provisions of the Consumer Product Safety Act or regulations issued thereunder?

The Defect

A material shortage in the late summer of 1974 resulted in a change from one type of printed circuit board material to another of lesser thickness. This in turn created a possibility that the range switch shaft, designed to be electrically floating, may come into contact with one of the components on the printed circuit board, and may therefore have an electrical potential of 250 volts dc. This would not affect the operating characteristics of the instrument, nor would it endanger the user unless he removes the plastic range knob or attempts to loosen the recessed set screws in the range knob while the instrument is operating (see Page 9 of the enclosed booklet: the range knob is the plastic T-shaped knob over the circular range dial, indicating 4,000 to 25,000 in this photograph, on the lower half of the face panel of the instrument). We can think of no reason why a user would attempt to do either of these things while the instrument is operating.

Mr. Michael Brown

Our records indicate that approximately 850 instruments that may contain this defect were shipped during the period from September, 1974 through last week. Of these, 177 were shipped to the U. S. Navy and 111 to the U. S. Air Force. The remaining number were shipped to approximately 400 different industrial and commercial customers in the United States and foreign countries. We could find no evidence that any of these instruments were shipped to non-industrial or non-commercial customers.

Does any of this information suggest that this could be classified as a "substantial" hazard under the provisions of the Consumer Product Safety Act or regulations issued thereunder?

Action Taken

We have inspected all of these instruments in our inventory and modified those found to contain the defect. This modification, consisting of the replacement of six aluminum spacing shafts with spacing shafts of slightly different lengths, has been incorporated into our manufacturing process.

We have identified all of the customers to whom these instruments were shipped during the period in question. We are now sending letters to these customers advising them that the defect may exist and requesting that they ship the instrument(s), freight collect, to our nearest service center. Upon receipt of the instrument, we will inspect and modify, as appropriate, and put it in prepaid transit back to the customer within three working days.

I am looking forward to receiving your response to the two questions I have raised in this letter. If you have any questions or other comments concerning this matter, please write or give me a call at (617)369-4400, extension 495.

Very truly yours,

John L. Steele, Jr.

John L. Steele, Jr.
Assistant Secretary

JLS:lc
Enclosure

CC: Mr. Dennis Trietch
Office of Product Defect Identification
Consumer Product Safety Commission
5401 Westbard Avenue
Washington, D. C. 20207