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OFFICE OF SECRETARY
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CONSUMER PRODUCT SAFETY COMMISSION

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

APR 21 1975

No response - 6a/6b cleared
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Mr. Kevin C. McMahon
14th Floor Norton Building
Seattle, Washington 98104

Dear Mr. McMahon:

This letter is in response to your inquiry of January 31, 1975 concerning whether the Fluke Model 8000-A Digital Multimeter is a "consumer product" as that term is defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

Section 3(a)(1) of the Act defines the term consumer product as meaning any article, or component part thereof sold to or used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. However, the term consumer product does not include any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer.

In explaining the definition, the legislative history of the Act states in relevant part:

> The definition of the term "consumer product" delimits the jurisdictional reach of this bill. Because it is intended to vest omnibus product safety authority in a single Federal agency, the definition 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

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recreation, or otherwise. Special attention should be paid to the use of the phrase: "produced or distributed for sale to *** or for the use *** of a consumer." 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.

It is not intended that true "industrial 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. (H.R. Rep. No. 92-1153, 92d Cong., 1st Sess. 27 (1972)).

We believe you acted judiciously in reporting the defect in your client's product to the Commission; and, from the description of your client's product that you provided this office, it does not appear to the Office of the General Counsel that the product is a consumer product as that term is defined in the Consumer Product Safety Act. In any event, our office believes the manufacturer of the product should initially determine whether the distribution and use patterns of the product result in its becoming a "consumer product." In our view, any doubt should be resolved in favor of considering the product to be a consumer product. While the views expressed in this letter are based on the most current interpretation of the law by this office, they could subsequently be changed or superseded by the Commission.

Sincerely,

Michael A. Brown
General Counsel

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January 31, 1975

IN REPLY REFER TO
FILE NO.

RECEIVED FEB 1 1975 CONSUMER PRODUCT SAFETY COMMISSION

Michael Brown, Esq.
General Counsel
Consumer Products Safety Commission
1750 K Street N.W.
Washington, D.C. 20207

Re: Possible Product Defect in John Fluke Mfg. Co., Inc. Digital Multimeter Model 8000A-06

Dear Mr. Brown:

We are writing on behalf of John Fluke Mfg. Co., Inc., whom we represent. The Company, which is located in Seattle, Washington, is a manufacturer of electronic testing and measurement devices.

On January 28, 1975, we telephoned the Consumer Products Safety Commission's office of Product Defect Identification, and spoke to Mr. Dennis Trietch. We advised Mr. Trietch that although the Company did not regard itself as a producer of consumer products in general, and did not feel that the product involved in particular was a consumer product, nonetheless, they preferred to err on the side of caution and wished to notify the Commission of a potential defect in one of their products. We described the product, the potential defect, and the corrective steps undertaken to Mr. Trietch, and he indicated that there was a question as to whether the product involved was in fact a consumer product covered by the Act. In a subsequent conversation on January 28, Mr. Trietch advised us that we could consider that the Company had satisfied its duty under §15 of the Consumer Product Safety Act to notify the Commission that the defect could create a substantial product hazard. Mr. Trietch also requested, however, that we write you to describe the product and its purchasers in somewhat more detail to assist you in making a determination of whether the product involved is a consumer product covered by the Act.

Enclosed with this letter is a brochure describing the general features of the Fluke Model 8000-A Digital Multi-

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meter. The instrument which may have the potential defect is the model described as the "Low Ohms Option" Model 8000A-06. The Company informs us that the 8000A-06 is a special purpose version of the 8000A, which is designed for use in commercial or industrial applications. Typical uses would include testing of circuits in telephone equipment, cables, and printed circuit boards. Because of the relatively high cost of the 8000A-06 (approximately $350 at retail) and the limited and specialized uses for which it is designed, the Company views it highly unlikely that this model would be purchased by a consumer for recreational or household use.

Although this may not be directly relevant to the question of coverage under the Act, the Company has already begun the process of recalling all of the Model 8000A-06 Digital Multimeters that have been sold in the United States. The defect, which involves misplacement of a wire in the assembly process, is known to exist in only one of the multimeters sold, but the Company is having all of them taken back by its distributors, who are equipped to test the machines and make the repair, if necessary. Approximately 800 such machines have been sold, and the Company anticipates that it will be able to locate and test substantially all of them.

Please contact the undersigned if we may be of further assistance, or if any additional information is required.

Very truly yours,

JONES, GREY & BAYLEY

By Kevin C. McMahon
Kevin C. McMahon

KCMcM:tc

cc: Mr. Dennis Trietch
Mr. Frank Partin