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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

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Milan Ruzicka, Esquire
3307 Rowland Place, N.W.
Washington, D. C. 20005

Dear Mr. Ruzicka:

This letter is in reply to your correspondence of February 25, 1975, concerning short-handled hoes and similar products. In response to your first question, it is the view of the Office of the General Counsel that the Commission could, in appropriate situations, commence regulatory action under the Consumer Product Safety Act concerning hazards presented by consumer products "which although safe as to their finish,...present a hazard inherent in the construction to those properly using the product." However, before the Commission could initiate any regulatory action, it would have to at least preliminarily determine or have reason to believe that there is an unreasonable risk of injury associated with the product, a substantial product hazard or an imminent hazard.

Any action taken by the Commission to promulgate a consumer product safety rule under the Consumer Product Safety Act, including a ban of a product, is dependent in part on a product being determined to present an unreasonable risk of injury. Although the term "unreasonable risk of injury" is not defined in the Consumer Product Safety Act, the legislative history of the Act specifies in part:

> "An unreasonable hazard is clearly one which can be prevented or reduced without affecting the products utility,

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> cost, or availability; or one [as to] which the effect on the product's utility, cost or availability is outweighed by the need to protect the public from the hazard."

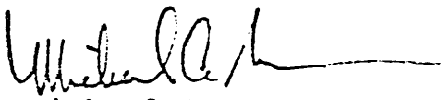
The Senate, in its discussion of the term "unreasonable risk of injury" considered whether a knife would present an unreasonable risk of injury. That discussion may be relevant to the question you have raised about short-handled hoes. The Senate report states:

> "...a product such as a knife, which in absolute terms might contain the same hazards as the original clacker balls, might not contain 'unreasonable' risks because of the utility of the product, the awareness of the consumer to the risks involved in using the knife, and the type of person who is likely to be exposed to the risk." (Sen. Rep. No. 92-749, 92d Cong., 2d Sess. 14-15 (1972))

You also asked whether manufacturers, distributors or retailers of short-handled hoes are required to report the "possible 'inherent' hazard in [that] product, under section 15(b) of the Consumer Product Safety Act." The reporting requirements of section 15(b) are applicable to manufacturers, distributors and retailers who obtain information which reasonably supports the conclusion that a product contains a defect which could present a substantial product hazard. In the view of this office, the "possible inherent hazard" associated with hoes that you describe in your letter, i.e., "proper use of the hoe requires much bending that often leads to serious back injuries" would not appear to fall within the meaning of the term substantial product hazard as defined in section 15 of the Consumer Product Safety Act (15 U.S.C. 2064). A copy of the Act is attached for your information.

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

Enclosure

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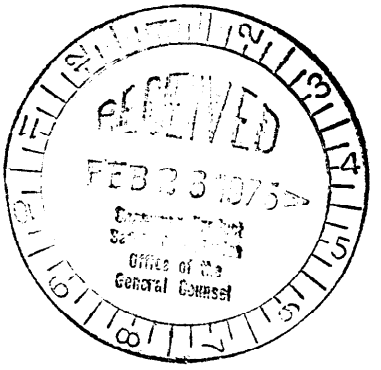

Michael A. Brown, Esq.
General Counsel
Consumer Product Safety
Commission
1750 K Street, N.W.
Washington, D.C. 20207

Dear Mr. Brown:

I know of the commendable practice of your office to issue advisory opinions on problems which are either novel or need clarification. I would like to ask for your opinion on the following problem.

It concerns short-handled hoes, products used by consumers in or around a permanent or temporary household or residence, and hence a "consumer product" as defined in the Consumer Product Safety Act.

Short-handled hoes may present some hazard if improperly used, but also, according to the Supreme Court of California, may contain inherent physical defect in that the proper use of the hoe requires much bending that often leads to serious back injuries. The California court, however, dealt with this item as an industrial product used by farmers and decided the question under the state occupational safety law.

The decision and the problem present a number of questions for the Consumer product Safety Commission:

1) Would the commission deal with hazards presented by products such as short-handled hoes, which although safe as to their finish (no rough edges, no sharp points, proper security against sudden dislodging of the metal part), present a hazard inherent in the construction to those properly using the product?

2) If yes, would the commission issue a standard on such products, which would, in effect, ban items presenting a hazard due to their inherent constructional characteristics?

3) Is a manufacturer, distributor, or retailer of, say, short-handed hoes required to report the possible "inherent" hazard in this product, under section 15(b) of the CPSA?

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I would appreciate your prompt response to the problems.

Sincerely,

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Washington, D.C. 20008

MR:heg