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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

JUN 5 1975

RECEIVED OFFICE OF CONSUMER PRODUCT SAFETY COMMISSION JUN 6 49 PM '75

Mr. John Withington
Vice President
Kut-Kwick Corporation
P.O. Box 984
Brunswick, Georgia 31520

Dear Mr. Withington:

The Office of the General Counsel has been asked to respond to your letter of April 16, 1975, in which you request that the Consumer Product Safety Commission clarify whether commercial equipment is excluded from the mandatory lawn mower safety standards currently being developed in proceedings under the Consumer Product Safety Act.

Any standard for power lawn mowers promulgated by the Commission will be limited to those products that are "consumer products" as that term is defined in section 3(a) of the Consumer Product Safety Act. The term consumer product is defined to include any article, or component part thereof, produced or distributed for sale to or use by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. (15 U.S.C. 2052(a)).

This office has indicated in previous advisory opinions (see numbers 94 and 134 enclosed) that products used by employees exclusively within the scope of their employment would not fall within the definition of consumer product. However, the legislative history of the Consumer Product Safety Act indicates that "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

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consumers." (H.R. Rep. No. 92-1153, 92d Cong; 2nd Sess. 27 (1972)). In addition, the legislative history of the term consumer product also states:

> "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."

In view of the foregoing, the Commission will look to the distribution and use pattern of products, including various types of power lawn equipment, to determine if those products fall within the meaning of the term "consumer product" as defined in the Consumer Product Safety Act.

Please do not hesitate to contact this office if you have any further questions.

This advisory opinion, which can be subsequently changed or superseded by the Commission, reflects the most current interpretation of the law by the Office of the General Counsel.

Sincerely,

Margaret A. Freeston

Margaret A. Freeston
Acting Assistant General Counsel

Enclosures

KUT-KWICK CORPORATION
INDUSTRIAL MOWING EQUIPMENT
— MANUFACTURERS —

P. O. BOX 984
TELEPHONE CODE 912 265-1630
1927-29 NEWCASTLE STREET

BRUNSWICK, GEORGIA 31520

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APR 21 1975
TECHNICAL ANALYSIS DIVISION

April 16, 1975

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MAY 1 1975
Consumer Product Safety Commission
Office of the General Counsel

Alan M. Ehrlich, Ph.D., Standards Coordinator
Consumer Products Safety Commission
Westwood Tower, 5401 Westbard Avenue
Bethesda, Maryland 20207

Dear Doctor Ehrlich:

We request this letter be considered a petition to the Consumer Product Safety Commission that they (the Commission) clarify their intent that commercial equipment is excluded from the proposed mandatory lawn mower safety standards.

As background related to the above, during the Consumer Union task force meeting held in New Orleans February 26 toward finalizing a draft of a mandatory lawn mower safety standard for presentation to the Consumer Product Safety Commission, the following questions were raised relating to commercial mowing equipment, and it was suggested you would entertain a letter on this subject:

1. Is there not a wide division in the use and/or application or commercial mowing equipment as opposed to Consumer type equipment?

2. Is there not a great deal of difference in a paid professional operator of commercial type mowing equipment as opposed to a Consumer mowing his lawn?

3. In view of the possibilities above, would there not be a safety standard written for commercial mowing equipment alone?

I would like to address myself to the above, being mindful of two basics: We are (all) definately safety conscious in that we hope to eliminate accidents insofar as technology and common sense allow, and secondly, we realize the operators and the public are protected by law under Section 15b of the Consumer Product Safety Act.

With reference to paragraph one (1), I would assume a Consumer would operate his lawn mower some forty (40) hours a year. Statistics suggest some 7,000,000 lawn mowers are sold a year, of which, probably, 98% to 99% are Consumer (home owner) types. Conversely there are some twenty-five (25) manufacturers of commercial mowing equipment (rotary, reel, hammer knife, sickle bar). The operators of this equipment are paid, trained operators who operate this equipment an average of thirty (30) hours a week. Considering the grass growing and cutting seasons involved I would assume they average thirty-five (35) weeks a year, or approximately 1,000 hours a year.

With reference to paragraph two (2), a professional operator is taught and paid to mow correctly and safely, and to take care of his equipment, Much of this equipment is expensive, hence preventative maintenance is a requisite, and a safety oriented requisite involving engine, blades, guards, frame, attachments, belt, pulleys, and incidental accoutrements peculiar to his commercial equipment. A Consumer generally would not have his training, nor really be sensitive in the areas above unless something broke, or he (the person) broke something.

With reference to paragraph three (3), I submit a safety standard should be considered for commercial mowing equipment where possibly 90% of a manufacturers sales is for commercial use. Commercial use might be broadly defined as use around plants, school areas, parks, cemeteries, roadways, slopes, playground areas, housing areas, housing developments and other areas which could be defined as commercial areas.

Personally, I do not recall any NEISS reports attributing commercial equipment and/or operators to any accident trend. Granted we all have had unfortunate accidents with our equipment and I state unequivocally we have all become more safety conscious in the last few years. We are all quite aware of the Products Liability "deep pocket" theory also. Our insurance companies preach this to us constantly with an added admonition that the days are gone of "Let the buyer beware" - it is now "Let the manufacturer beware."

In conclusion, I note the proposed Consumer Union "Scope and Application" (1.1) Document 39e notes application to "Consumer Product" as defined by section three (3) of the Consumer Product Safety Commission. I believe this section is vague as to the particular products covered.

Respectfully submitted,

KUT KWICK CORPORATION

John Withington
Vice President

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