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#217

JUL 31 '75
CONSUMER PRODUCT SAFETY COMMISSION

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

JUL 31 1975

Lewe B. Martin, Esquire
Pope Ballard & Loos
700 Brawner Building
888 Seventeenth Street, N.W.
Washington, D.C. 20006

Dear Mr. Martin:

This is in response to your June 13, 1975 request for an advisory opinion concerning the Commission's bicycle regulations. Your three questions relate to section 1512.3 which requires that "[a]ny bicycle subject to the regulations in this part shall meet the requirements of this part in the condition in which it is offered for sale to consumers...." (39 FR 26105)

In response to your first question, your understanding that the bicycle regulations apply only to bicycles (see sections 1500.18(a)(12) and 1512.2) is correct. For the purposes of the regulations, however, the bicycle includes all accessories sold with the bicycle, whether attached or unattached at the time of sale to the consumer. The regulations are not applicable to accessories which are manufactured and marketed to the consumer separately from the bicycle.

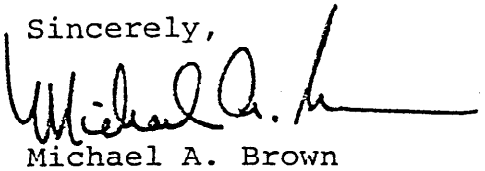
Your second and third questions concern the installation of accessories by dealers. Specifically, you ask when a bicycle dealer can install accessories without becoming liable for altering a bicycle. As you know, section 4(b) of the Federal Hazardous Substances Act (15 U.S.C. 1263(b)) prohibits the "doing of any ... act with respect to a hazardous substance, if such act is done while the substance is in interstate commerce or while the substance is held for sale (whether or not the first sale) after shipment in interstate commerce, and results in the hazardous substance being a ... banned hazardous substance."

ADVISORY OPINION

The interpretation of this office is that any installation of an accessory which is a condition of a sale to a consumer or otherwise part of such a sale would fall within section 4(b) of the Act. Therefore, if such installation of an accessory by a dealer resulted in making a bicycle a banned hazardous substance, the Commission staff would be prepared to initiate enforcement action against the dealer. In response to your specific example, it is possible that the installation of an accessory by a dealer after a purchaser has ridden a bicycle around the block would be part of a sale under section 4(b).

Your final question is whether a bicycle dealer could be liable under the Act if he or she displays a bicycle with accessories and advises a consumer who purchases that bicycle that the accessories were not attached or considered when the bicycle was labeled to be in compliance with the bicycle regulations. The interpretation of this office is that a sale to a consumer under these conditions would be wholly within section 4(b) of the Act. Therefore, the dealer would be liable for altering a bicycle if an accessory included in the sale resulted in the bicycle being a banned hazardous substance at the time of sale. This would be true even if the dealer disclosed the existence of a possibly nonconforming accessory to the consumer.

Sincerely,



Michael A. Brown
General Counsel

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June 13, 1975

RECEIVED
JUN 16 1975
Consumer Product Safety Commission
Office of the General Counsel

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

Dear Mr. Brown:

On behalf of the Bicycle Wholesale Distributors Association, a nationwide trade association of some forty-eight wholesale distributors of bicycles, may I request an advisory opinion concerning §1512.3 of the Bicycle Safety Standards published in the Federal Register of July 16, 1974 (39 F.R. 26105). This Section provides in part, "Any bicycle subject to the regulations in this part shall meet the requirements of this part in the condition in which it is offered for sale to consumers . . . ."

On July 9, 1973 this Association submitted comments on the Proposed Classification Of Bicycles As Banned Hazardous Substances wherein we urged that all bicycles except those designed for competitive racing should be completely assembled and in good operating condition when delivered to the ultimate retail consumer. We still believe that the only way to insure consumers of new bicycles a properly operating vehicle free of mechanical hazards is to have them assembled and adjusted by qualified personnel using proper tools and equipment. Particularly is this true of bicycles equipped with derailleurs and caliper brakes. We submit that improper set up is probably the cause of more accidents than failure of components, and yet a tremendous amount of time has been devoted to stress tests, which although proper, will probably not cause any changes in the majority of the bicycles marketed in the United States.

In addition to properly assembling a bicycle accessories to a bicycle should be properly installed. Accessories include such items as: baby seats, baskets, speedometers, generator sets and lights, pumps, bells, bags, bottles, mirrors and kick stands. An example of an accessory which may cause a problem is a baby seat, which in many cases, extends higher than the top of the saddle when installed. It is much safer to have a dealer install this child carrier than a consumer, who even though he may receive adequate instructions, may make

an improper installation.

Assuming that a bicycle dealer has received a bicycle in interstate commerce which was in compliance with the regulations of the final safety standard:

Query #1: It is our understanding that the regulations will apply only to the bicycle as manufactured and not to accessories manufactured and marketed separately. Is this correct?

Query #2: When in the life of such a conforming bicycle can a bicycle dealer install accessories without becoming liable for altering the bicycle. For example, will it be necessary for a purchaser to take delivery of the conforming bicycle, ride it around the block, and then return to have an accessory installed.

Query #3: Can a bicycle dealer display accessories on such a conforming bicycle, and if a consumer purchases it advise him that these accessories were not attached or considered when the bicycle was labeled to be in compliance and not be liable for altering a bicycle.

Sincerely,

Lewe B. Martin

Lewe B. Martin

LBM/jgb

217-A

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

25 MAR 1976

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Lewe B. Martin, Esquire
Pope, Ballard & Loos
700 Brawner Building
888 Seventeenth Street, NW
Washington, D.C. 20006

Dear Mr. Martin:

The purpose of this letter is to clarify Advisory Opinion #217, issued by this office on July 31, 1975. That advisory opinion responded to some issues which your June 13, 1975 letter raised concerning the applicability of the Commission's bicycle regulations to accessories.

One portion of Advisory Opinion #217 stated that a bicycle, for purposes of the regulations, "includes all accessories sold with the bicycle, whether attached or unattached at the time of sale to the consumer. The regulations are not applicable to accessories which are manufactured and marketed to the consumer separately from the bicycle." We understand that this explanation has created some confusion among many bicycle dealers who are concerned that they would be liable for violations of the FHSA whenever they sell or install an accessory which results in the bicycle being out of compliance with the regulations. A clarification of the quoted language appears necessary and we believe that it will alleviate some dealer concern.

Dealers are not liable under the FHSA for selling non-installed bicycle accessories that could cause non-compliance if the accessories are not intended by the manufacturer to be part of the bicycle. In addition, dealers are not liable under the FHSA for installing any accessory onto a bicycle that affects compliance after the sale of that bicycle to the consumer has been completed.

As a practical matter, a bicycle dealer might assemble and then sell to a consumer a bicycle that does not come equipped with a horn. If the dealer also sells bicycle horns, he could <u>sell</u> one to the consumer without risking

liability under the FHSA even if the consumer later installs the horn in such a way that it transforms the bicycle into a product that does not conform to the bicycle regulations. If the dealer selling the bicycle installs the horn at the same time he is selling the bicycle, he could incur liability. If the consumer buys a bicycle and then has a different dealer install the horn or has the same dealer install the horn the next day (as long as the sale of the bicycle was completed the day before), the dealers in these situations would not be liable under the FHSA for installing the horn even if it makes the bicycle into a nonconforming product.

The following discussion further elaborates upon the language of Advisory Opinion #217. The bicycle regulations apply to all accessories sold with the bicycle, whether attached or unattached at the time of sale to the consumer, that are intended by the manufacturer to be part of the bicycle. For example, if accessories are contained in a carton with the bicycle and/or if the instruction manual accompanying the bicycle (see section 1512.19) includes assembly directions for accessories, the Commission will assume that they are intended to be part of the bicycle.

If any accessory that is intended by the manufacturer to be part of the bicycle is responsible for causing a violation of the regulations, the seller of such bicycle and accessory as well as the manufacturer of the bicycle is potentially liable under the FHSA. (A noncomplying bicycle could be a "banned hazardous substance" because of an unassembled accessory, according to section 1512.3 of the regulations.) In contrast, if any accessory not intended by the manufacturer to be part of the bicycle is sold to a consumer, whether along with or separately from the sale of a bicycle, the seller would not be liable under the FHSA as long as he does not install any such accessories.

The installation of accessories is a different matter than the sale of accessories without installation. Whenever a bicycle dealer or any other person installs any accessory onto a bicycle covered by the regulations prior to the sale to the consumer, regardless of whether he has also sold that bicycle, he is potentially liable under the FHSA. (This applies to accessories that are or are not intended by the manufacturer to be part of the bicycle.) Enforcement by the Commission in situations concerning installation would not constitute regulation of accessories, but rather regulation of a bicycle which has been transformed into a banned hazardous substance in violation of the FHSA and the bicycle regulations.

As we indicated in Advisory Opinion #217, a bicycle sold to a consumer might remain in interstate commerce even after the consumer takes possession and rides around the block if a condition of the sale is that the seller install an accessory onto the bicycle. We cannot rule out the possibility that installation of an accessory under such circumstances will be considered by the Commission's enforcement staff to be a sham to avoid the scope of the regulations and a potential violation of the FHSA. In the absence of such evidence, the sale of a bicycle to a consumer would mark the end of its being in interstate commerce and any subsequent installations of accessories by consumers, dealers, or others would fall outside of the Commission's authority under the FHSA.

Sincerely,

Michael A. Brown
General Counsel