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CONSUMER PRODUCT SAFETY COMMISSION

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October 7, 1975

Tomas M. Russell, Esquire
Sidley & Austin
One First National Plaza
Chicago, Illinois 60670

Dear Tom:

We have received a copy of a speech that was prepared for delivery by you at the September 9, 1975 meeting of the Society of Cosmetic Chemists in Chicago, Illinois. In your speech, at page 14, you state:

> "Since the order published [by the Consumer Product Safety Commission] July 24 held that aerosols do not present an unreasonable risk of injury from explosion, we can conclude that reports were not required under section 15(b)."

This statement is a serious misinterpretation of the July 24, 1975 opinion published by the Commission. In its opinion, the Commission did not relieve manufacturers, distributors and retailers of their section 15 obligations. The order, at 40 FR 31030 states:

> CSPI requested the Commission to investigate the safety of aerosol containers and to require explosion proof containers. The Commission's investigation which included hearings held in February and March, 1974, and May, 1975, review of death certificates furnished by local jurisdictions and in-depth investigation of injuries reported by hospital emergency rooms through the Commission's National Electronic Injury Surveillance System (NEISS) as well as other sources

> demonstrates that, at this time, no unreasonable risk of injury is associated with exploding aerosol containers. Therefore, this request is denied without prejudice.

The finding that, at this time, no unreasonable risk of injury is associated with exploding aerosol containers was made as a result of a petition to institute proceedings for the promulgation of a regulation requiring aerosols to be packaged in explosion proof containers. The findings that must be made in order for the Commission to initiate proceedings for the promulgation of a regulation requiring aerosols to be packaged in explosion proof containers are different from the criteria for determining what constitutes a "substantial product hazard" under section 15(b) of the Consumer Product Safety Act.

In order to initiate a section 7 proceeding for the promulgation of a Consumer Product Safety Rule, the Commission is required to make a preliminary finding that an "unreasonable risk of injury" is associated with the consumer product. However, under section 15 of the Consumer Product Safety Act (CPSA) manufacturers, distributors, and retailers are required to report defects that could create "substantial product hazards" to the Commission. Notification requirements are provided at 16 CFR Part 1115. "Substantial product hazard" is defined in section 15 of the CPSA 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." It is entirely possible that a particular line of aerosol products packaged by a manufacturer may present a substantial product hazard of explosion that must be reported by the individual manufacturer, distributor, or retailer. However, the presence of a "substantial product hazard" in an isolated line of aerosol products may not support a finding that an unreasonable risk of injury from explosion is associated with aerosols in general. As a result, although an industry-wide regulation was not found to be necessary at this time, the manufacturer, distributor, or retailer of the product that presented the substantial product hazard would still be required to report the substantial product hazard to the Commission.

Failure to furnish information required by section 15(b) is a prohibited act under section 19(a)(4) of the CPSA, for which the Commission may obtain civil and/or criminal penalties under

sections 20 and 21 of the CPSA. In view of the potential liability for failing to report substantial product hazards, you may wish to call this matter to the attention of members of the society.

Sincerely,

Original signed by
Michael A. Brown

Michael A. Brown
General Counsel

cc: Secretary
Society of Cosmetic Chemists

Dr. N. Meltzer

[redacted]

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