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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

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Mr. J. R. Coupal, Jr.
Deputy Administrator
Federal Highway Administration
Washington, D.C. 20591

Dear Mr. Coupal:

This is in response to your July 17, 1975 letter requesting that the Commission revoke its February 12, 1975 advisory opinion (No. 181) which asserted jurisdiction over traffic control signal devices. That advisory opinion stated that the traffic devices are "consumer products" under section 3(a)(1) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2052(a)(1)). Your letter challenged this jurisdictional determination by stating that traffic devices do not fall within the section 3(a)(1) definition of a consumer product (quoted in relevant part):

> The term 'consumer product' means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term 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....

Interpreting this definition, your letter concluded that traffic devices are not consumer products because they are principally (or solely) used by state and local governments and because they are not used, consumed, or enjoyed by consumers

in or around a "household or residence, a school, in recreation, or otherwise."

The Commission, after considering your interpretation, has affirmed its earlier finding that traffic devices are "consumer products" within the meaning of the CPSA. Traffic devices are used by government bodies for traffic control, but they are also used by persons crossing streets, and consumer use can exist concurrently with use by a governmental entity. Whether a consumer or a government purchases the traffic device is immaterial to the jurisdictional question because the legislative history of section 3(a)(1) clearly states that "[i]t is not necessary [for CPSA jurisdiction] that a product be actually sold to a consumer, but only that it be produced or distributed for his use" (House Interstate and Foreign Commerce Committee Report No. 92-1153 at 27).

While traffic devices are "consumer products," certain potential risks of injury presented by them do not appear to be among those which Congress intended to be reduced or prevented by regulatory or enforcement action under the CPSA. By now deciding that certain such risks fall within this category, the Commission is clarifying the scope of its February 12, 1975 advisory opinion which broadly asserted jurisdiction over traffic devices.

The appropriateness of Commission action against traffic devices under the CPSA depends on the particular factual situations and potential risk of injury involved. It would therefore be impossible to decide such questions unless an actual situation were before the Commission. However, two examples might illustrate the types of potential risks that the Commission could consider addressing under the CPSA. According to the Commission's current thinking, the potential risk of electric shock presented by an improperly wired "Walk" button of a traffic device could be either "an unreasonable risk of injury associated with" traffic devices or a "defect which could create a substantial product hazard" under sections 7(a) and 15(a) of the CPSA, respectively. In contrast, the Commission believes that the potential risk of injury presented by a malfunctioning traffic light which directs cars or pedestrians to enter an intersection into oncoming traffic is not the type which could be addressed under provisions of the CPSA.

Please note that the existence of jurisdiction by this Commission over a consumer product does not necessarily preclude

jurisdiction by another federal agency or by a state or local government over the same product.

The views expressed in this letter have been approved by the Commission.

Sincerely,

Margaret A. Freeston
for
Michael A. Brown
General Counsel

cc: Thomas F. Geren, Gulf & Western Industries, Inc.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C. 20591

OFFICE OF THE ADMINISTRATOR

JUL 17 1975

IN REPLY REFER TO:
HTO-20

Mr. Richard O. Simpson
Chairman
Consumer Product Safety Commission
1750 K Street NW.
Washington, D.C. 20207

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CONSUMER PROD.
SAFETY COMMISSION

Dear Mr. Simpson:

Advisory Opinion No. 181, dated February 12, 1975, released by the Consumer Product Safety Commission in response to an inquiry by the Eagle Signal Division of Gulf and Western Industries, Inc., advises that traffic control signal devices are subject to the Consumer Product Safety Act (P.L. 92-573). This action, whereby the Commission states its view that these products are subject to jurisdiction of the Act, appears to be entirely arbitrary and contrary to the stated purposes of the Act. The Opinion relies entirely on the definition in the Consumer Product Safety Act of a "consumer product." The Act does not define a "consumer." That task is left to necessary implication. Section 3(a)(1) of the Act defines "consumer product" functionally as an article

> (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include — (a) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer . . . (emphasis added).

It thus appears, for the purposes of both the statutory general definition and its first exception, that we must determine who a "consumer" of products might be. From paragraph (i) we find that a "consumer" has a household or residence, or attends or operates a school, or enjoys recreation, or does "otherwise." From paragraph (ii) we learn that this "consumer" makes personal (not corporate or governmental) use of, consumes, or enjoys the product in or around the places named in (i).

From the foregoing, the only reasonable conclusion is that a "consumer" is a private individual or group who buys, uses, consumes, or enjoys certain products in or around a home, school, place of recreation, or "otherwise." This last quoted term, under the rule of eiusdem generis, cannot be stretched beyond the scope of the wholly private activities of dwelling, learning and teaching, and enjoyment of recreation, to include the completely dissimilar police power function of traffic regulation by a public body such as a State or its political subdivision. That such public bodies are not "consumers" is further made clear by subsections 2(a)(4) and 2(b)(3) of the Act, which make sharp distinction between the two.

Since the State and local governments, which are the principal (if not sole) users of electrical and/or mechanical traffic control signal devices are not "consumers" within the meaning of the Act, then those devices which are produced for them and not for the general public are plainly not "consumer products," and are expressly excluded from the definition by the exception in (3)(a)(1)(A).

For the above reasons we challenge the action taken in Advisory Opinion No. 181 and request that the Commission revoke this Opinion.

Sincerely yours,

J. R. Coupal, Jr.

J. R. Coupal, Jr.
Deputy Administrator