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UNITED STATES GOVERNMENT

Memorandum

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

JAN 30 4 33 PM '76

DATE: JAN 30 1975

TO : Thomas McKay, Director, OCR MAF
THRU : Margaret A. Freeston, Asst. General Counsel

FROM : Phil Bechtel, OGC
PB

SUBJECT: CPSC Jurisdiction Over Automatic Car Wash Equipment

This is in response to your inquiry concerning CPSC jurisdiction over automatic car wash equipment.

The Consumer Product Safety Act (15 U.S.C. section 2051 et seq.) provides the CPSC with the authority to regulate "consumer products."

Section 3(a)(1) of the Consumer Product Safety Act defines consumer product as:

> "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..."

The legislative history of this section clarifies Congress' intent not to exclude products that are used by consumers:

> "It is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use.... [P]roducts 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 consumers." [House Interstate and Foreign Commerce Committee Report, House Report No. 92-1153, p. 27]

Automatic car wash equipment would appear to be a product produced or distributed for the use by and enjoyment of a consumer. As a result, automatic car wash equipment would fall within the definition of "consumer product."

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Although the CPSC has jurisdiction over automatic car wash equipment, the Commission does not have the authority to reduce or eliminate every risk of injury to which a consumer may be exposed during the operation of an automatic car wash. From the letter submitted by the constituent of Rep. Stark, it is not clear whether the risk of injury to which the constituent was exposed was caused by negligence of the attendants in leaving their posts, or whether the risk of injury was associated with the product or caused by a defect in the product itself. Under the CPSA, the Commission may not have the authority to reduce or eliminate risks of injury caused by the negligence of an employee or professional operator charged with the responsibility of operating a consumer product for the use by, or enjoyment of, a consumer.

Although the CPSC may lack the authority to require attendants to properly operate or oversee the operation of the car wash equipment, the CPSC could promulgate a consumer product safety rule in order to eliminate or reduce an unreasonable risk of personal injury associated with automatic car wash equipment. The CPSC currently has no regulations governing car wash equipment in automatic car washes. In addition to performance requirements, a consumer product safety standard could require that warning labels or signs be placed upon automatic car wash equipment. In order for the Commission to propose a consumer product safety rule governing automatic car wash equipment, the Commission would have to preliminarily determine that there is an unreasonable risk of injury associated with this product. The analysis of unreasonable risk of injury is based upon such factors as reported injuries, technical analysis of risks, engineering or other technical data, sound judgment, and the effect of decreasing risk on the cost, utility, and availability of the product.

State and local authorities would appear to have jurisdiction over the operation of car washes, including the presence of qualified attendants, the maintenance of the equipment in proper working order, and any regulation that would require consumers to remain outside their cars during the car wash.

The statements in this memorandum represent the current interpretation of the law by the Office of the General Counsel. Our opinions could be subsequently modified or withdrawn at any time by action of the Commission.

Attachments

TNEY H. (PETE) STARK
.IN DISTRICT, CALIFORNIA

COMMITTEES:
BANKING AND CURRENCY
DISTRICT OF COLUMBIA

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

October 14, 1975

Thomas McKay, Director
Congressional Relations
Consumer Product Safety Commission
1750 K Street, N.W.
Washington, D.C. 20207

Dear Mr. McKay:

I would appreciate your looking into any regulations and agencies involved in governing the operation of automatic car washes.

This questions was raised by my constituent in the attached letter and her concern seems quite valid as a result of her experience.

Please forward any information to my district office at #7 Eastmont Mall, Oakland, California, 94605 (attention Cheryl Frasca).

Thanks for your help.

Sincerely,

Pete Stark

Fortney H. Stark, Jr.
Member of Congress

FHS/cf
enclosure

RECEIVED
OCT 20 1975

18616 - Crane Ave
Castro Valley, Ca. 94546
Oct. 6, 1975

Congressman
Pete Stark
7 Claremont Mall
Oakland, Ca. 94605

OCT 7 1975

Dear Sir

Can you help me to find any agency that regulates the safety of an automatic car wash? the kind you stay inside while the car is being washed.

I was half way thru one when it broke my windshield, the machine did not go off and there was no attendant to help me.

Sincerely
Lillian Mendoza
18616 - Crane Ave.
Castro Valley, Ca. 94546