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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

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CONSUMER PRODUCT
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Louis M. Marlin, Esquire
Marlin & Miller
Orange County
1100 Quail Street
Suite 217
Newport Beach, CA 92660

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Dear Mr. Marlin:

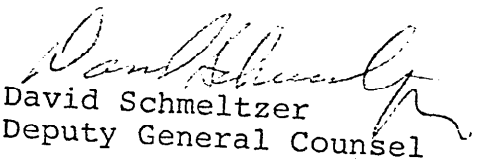
In our conversation of February 13, 1976 we discussed your letter to the United States Attorney for the Central District of California concerning notification of the Consumer Product Safety Act of your intention to file an action requesting repurchase of banned hazardous substances. As I indicated, there is no requirement that the Commission be notified of this action because it is not an action to enforce a consumer product safety rule or an order under section 15 of the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) as the terms are used in that Act.

Under section 3 of the Consumer Product Safety Act a "consumer product safety rule" is limited to a rule issued under that act and that term would not include rules and regulations issued under the Federal Hazardous Act (15 U.S.C. 1261). Therefore, while interested in your potential action we do not think the provisions of sections 19(a)(2), 19(a)(5) or 24 of the Consumer Product Safety Act apply to an action to require the repurchase of products banned under the Federal Hazardous Substances Act.

As I indicated to you, and subsequently to Ms. West, you may have a cause of action but we do not think it is created by the Consumer Product Safety Act.

For your information I have enclosed a previous adv opinion (#117) which is related to the problems presente in your situation.

Sincerely,



David Schmeltzer
Deputy General Counsel

Enclosure

cc: William D. Keller
United States Attorney

Charles R. McConachie
Acting Chief, Consumer Affairs Section
Antitrust Division
Department of Justice
Washington, D.C. 20530

Secretary

(111)

24 MAY 1974

[redacted]
[redacted]
[redacted]
[redacted] Street
[redacted] Indiana [redacted]

Dear Mr. [redacted]

This is in response to your March 27, 1974, notification under section 24 of the Consumer Product Safety Act (15 U.S.C. 2073) of your intention to file suit against the manufacturers, distributors, and retailers of [redacted] to enjoin them from manufacturing, distributing, and selling such product.

It is the opinion of this office that section 24 of the Act does not require Commission notification in this instance because such notifications are required only when an interested person is bringing an action to enforce a "consumer product safety rule." A "consumer product safety rule" is defined in section 3(a)(2) of the Act (15 U.S.C. 2052(a)(2)) as a "consumer product safety standard described in section 7(a) [15 U.S.C. 2056(a)], or a rule under this Act declaring a consumer product a banned hazardous product [as this term is used in section 8 of the Act (115 U.S.C. 2057)]. Since the violations alleged in your notification arise under the Federal Hazardous Substances Act and the Poison Prevention Packaging Act of 1970, a "consumer product safety rule" is not involved.

For your information the Commission has not instituted a civil or criminal action involving the violations alleged in your letter.

Sincerely,

Michael A. Brown
General Counsel

ADVISORY OPINION

DSLemberg:mli:5/24/74

cc: Executive Director
Secretary
C. Boehne (OFC)
OSCA
BCM
DSLemberg
GC Files
GC Chron
GC Readin

LAW OFFICES

[redacted]

March 27, 1974

TELEPHONE [redacted]

Certified Mail
Return Receipt Requeste

Consumer Products Safety Commissioner
Director of Bureau of Compliance
Washington, D. C. 20207

Gentlemen:

This letter is to serve as notice under Title 15 U.S.C. Section 2073 of violation of the Consumer Product Safety Act P.L. 92-573, the Poison Prevention Poisoning Act U.S.C. 1471-75, the Federal Hazardous Substances Labeling Act, 15 U.S.C. 1261 F.

On or about May 25, 1973 my client, William C. Hatcher was seriously burned by an explosion or splash back of the contents of a container of [redacted]" manufactured or distributed by [redacted] Company Division of [redacted] manufactured or distributed by [redacted] and sold to the consuming public by [redacted] Supermarkets, Inc.

The contents of said container were and are in violation of said statutory provisions because said liquid drain opener contained more than 10% by weight of sodium hydroxide (sulphuric acid); said drain opener does not have a restricted flow in that more than 2 millimeter of the contents will flow from the container by opening same and shaking or squeezing it. (Violation of 15 U.S.C. 1263) which prohibits the introduction and interstate commerce of a banned hazardous substance.

Suit will be filed within thirty days in the United States District Court, Southern District of Indiana, Indianapolis Division requesting that the above manufacturers, distributors and

and retailers of the said [redacted] be enjoined from manufacture, distribution and sale of said product.

Sincerely yours,

[redacted]

DFF/ms