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ADVISORY OPINION

#252

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

August 25, 1977

6(b) CLEARED: 3/15/84 DV

k No Mfrs Identified

Accepted

Mfrs Notified

Comments Processed

Product not under our jurisdiction

Mr. M. P. Baltes
4366 Witherow Road
Winston-Salem, North Carolina 27106

Dear Mr. Baltes:

This letter is in response to your correspondence of December 17, 1976 concerning a cigarette filter which broke and fell into your mouth. Your letter was forwarded to the Consumer Product Safety Commission (CPSC) by the Department of Justice. We apologize for the delay in responding to your letter.

The Consumer Product Safety Commission has responsibility for administering several statutes including the Consumer Product Safety Act (CPSA) and the Federal Hazardous Substances Act (FHSA). Section 3(a)(1)(B) of the CPSA excludes from the Commission's jurisdiction under the CPSA tobacco and tobacco products. Similarly, section 2(f)(2) of the FHSA, as amended, excludes tobacco and tobacco products from Commission jurisdiction under the FHSA. In our view, the legislative history of these exclusions makes it clear that Congress intended that the Commission not regulate any hazards associated with cigarettes. For example, the provision in the Senate version of the amendments to the statutes administered by the Commission that would have authorized the Commission to regulate cigarettes as an ignition source was deleted from the final bill. Therefore, we are unable to take any action in regard to your complaint.

While the views expressed in this letter are based upon the most current interpretation of the law by this office, they could subsequently be changed or superseded by the Commission. Please do not hesitate to contact me if you have further questions regarding this matter.

Sincerely,

T. Garrish

Theodore J. Garrish
General Counsel

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Mr. McCanochie - Safeway
Mr. Fleder

4366 Witherow Rd.
Winston- Salem, N. C. 27106
December 17, 1976

Lorillard Tobacco Co.

Gentlemen,

Prompted by the $1.00 refund coupon, I bought a carton of True cigarettes. I have smoked several packs, but definitely feel it would be 'hazardous to my health' to smoke another.

As I inhaled on one cigarette the plastic filter came out and caused me to choke. Fortunately, the filter did not lodge and was expelled rather easily. However, I would not want to risk another incident.

Although I am a very heavy smoker, I do admit that smoking is undoubtedly conducive to respiratory illnesses. The additional threat of choking can be eliminated by removing Trues from the market as a protective measure to the smoking public/

I fully intend to pursue this matter further.

Sincerely,

M. P. Baltes

M. P. Baltes

CC: State Attorney General,
Consumer Protection Division

U. S. Attorney General
Consumer Protection Division

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DEPARTMENT OF JUST
27 JAN 1 1 1977
RECOR

JRF
102-54M-0

2 MAR 1977

M. M.P. Baltes
4366 Witherow Road
Winston-Salem, North Carolina 27106

Dear M. Baltes:

This is in response to your recent letter concerning a cigarette filter which broke and fell into your mouth. As you may know, the Department of Justice, as a law enforcement agency, can act only where a violation of federal law is apparent. From an examination of your complaint, there is nothing we can do to help you.

We are, however, forwarding your inquiry to the United States Consumer Product Safety Commission for its consideration of this matter and appropriate action.

Sincerely yours,

JOHN R. FLEDER
Attorney
Consumer Affairs Section
Antitrust Division

cc: U.S. Consumer Product Safety Commission