U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

November 4, 1977

CLEARED: 3/15/84 RC
X No Mfrs Identified
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Kim D. Mann, Esquire
Turney & Turney
Suite 1010
7101 Wisconsin Avenue
Washington, D.C. 20014

Dear Mr. Mann:

This letter is in reply to your correspondence of August 12, 1977 to Mr. Alan H. Schoem of this office concerning certification obligations under section 14(a) of the Consumer Product Safety Act (CPSA). Your letter raises a number of questions about the responsibilities of various parties in the chain of distribution to issue or transmit certificates of compliance with the Safety Standard for Architectural Glazing Materials.

As you know, under section 14(a) of the CPSA, a manufacturer of a consumer product subject to a consumer product safety standard is required to issue a certificate certifying that the product conforms to all applicable consumer product safety standards. Section 14(a) also requires the certificate to accompany the product or otherwise be furnished to any distributor or retailer to whom the product is delivered.

While only the manufacturer of a consumer product must "issue" a certificate certifying that a product complies with a standard, it is the view of the Office of the General Counsel that all persons in the chain of distribution are responsible for making sure that the certificate accompanies the product or is otherwise furnished to distributors and retailers of the product. Thus, in the first hypothetical situation that you present, where a

ADVISORY OPINION

255

glass distributor cuts a billet purchased from a laminated glass manufacturer to specified size and sells it to a retailer or contract glazer, we believe the distributor is responsible for supplying the retailer or contract glazer with a copy of the certificate or for making sure that the certificate accompanies the product. As stated in our Advisory Opinion 248B, enclosed, certification may be in the form of a continuing certification.

In regard to the second hypothetical situation that you present, where a distributor buys tempered glass from a manufacturer and sells it to a retailer or contract glazer, the distributor, as in the first hypothetical, would in our view be responsible for making sure that the certificate of conformance accompanies the product or is otherwise furnished to a retailer of the product.

You also inquire as to the certification obligations of a contract glazer whose function is to install glass on the job site. A glazer who "assembles" glazing material into a product such as a glazed panel, for example, would be considered a "manufacturer" of products subject to the Standard, and as such must issue a certificate of compliance to any distributor or retailer to whom such products are sold. However, if the products are sold directly to the owner of the building as part of the building, no provision of section 14(a) requires the issuance of a certificate of compliance by the firm which fabricated the products.

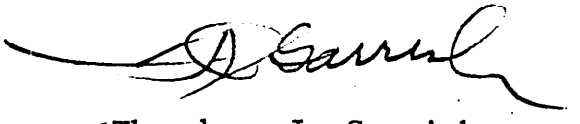
In your letter you also asked whether a firm which contracts to install glazing materials in a building so as to manufacture products which are subject to the Standard would be obligated by section 14(a) of the Act to issue a certificate of compliance if the other contracting party were a general contractor or builder of a building. It is the view of the Office of the General Counsel that in such an instance, the general contractor or builder would be in the position of a "retailer" with respect to the products and the building owner. Accordingly, in such a case, the firm which manufactured the products would be required to issue, or transmit a certificate of compliance.

However, if the other contracting party were the owner of the building, that party would be neither a "distributor" nor a "retailer" for purposes of section 14(a) of the Act.

In such a case, section 14(a) would not require the manufacturer of the products in question to issue a certificate of compliance to the other contracting party, although nothing in section 14(a) would prohibit the building owner from demanding to receive such a certificate as one of the conditions of the contract.

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 these matters.

Sincerely,



Theodore J. Garrish
General Counsel

Enclosure

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August 12, 1977

RECEIVED
AUG 15 1977
Consumer Product Safety Commission
Office of the General Counsel

Alan H. Schoem, Esquire
Consumer Product Safety Commission
1111 - 18th Street, N.W.
Washington, D.C. 20207

Re: Safety Standard for Architectural Glass

Dear Mr. Schoem:

As counsel for the Flat Glass Marketing Association and the Glass Tempering Association, I have been asked to secure the Commission's opinion regarding certification obligations under section 14(a) of the Act and the Commission's new standard for architectural glazing materials.

The certification questions that have arisen may be framed more clearly by posing them as hypothetical situations.

(1) A glass distributor cuts a billet purchased from a laminated glass manufacturer to specified size and sells it to a retailer or contract glazer;

(2) A distributor buys tempered glass from the manufacturer and does nothing to it but warehouse it and sell it to a retailer or a contract glazer.

In the first situation, I would suggest the laminated glass distributor, because he does nothing except cut the laminated glass to given dimensions, is not a fabricator under the standard and thus not a manufacturer under the statute. As I interpret section 14(a) of the Act, that distributor has no certification obligation even when he sells to a retailer or another distributor. While he may not be required to issue a certificate, is that distributor required to "pass along" the certificate of the prime manufacturer to the distributor's customer -- the retailer and glazer -- who may become a "manufacturer" under the statute?

In the second hypothetical, does the distributor of tempered glass, who does nothing to the lites he buys, have the same certification obligation as the laminated glass distributor described in the first hypothetical? What are the certification requirements of his customer, the glazer? Is the contract glazer,

whose function is to install the glass on the job site under contract with either the general contractor, builder, or home owner, a "manufacturer" under the standard and the statute? If so, is the general contractor, builder, or home owner a "distributor" or "retailer" of the product as those terms are used in the statute, thereby imposing some certification obligation on the glazer? What obligation, if any, would that be?

What I have described above are normal, daily transactions and dealings within the glass and glazing industry. Your prompt response to my inquiries will be greatly appreciated.

Sincerely,

Kim D. Mann

Kim D. Mann

cc: Mr. Thomas L. Vincent
Mr. Joseph L. Solomon
Mr. John J. Summers
Mr. W. Gene Gilbert
Mr. Robert L. Brown
Mr. William J. Birch
Allen Brauninger, Esquire