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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

February 23, 1978

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CONSUMER PRODUCT SAFETY COMMISSION

Mr. Kim D. Mann
General Counsel
Flat Glass Marketing Association
Turney & Turney
Suite 1010
7101 Wisconsin Avenue
Washington, D.C. 20014

Dear Mr. Mann:

This is in response to your letter of November 10, 1977 regarding certification of architectural glazing materials under section 14(a) of the Consumer Product Safety Act (CPSA). You ask whether a contract glazier may pass along or transmit a certificate of compliance issued originally by a glass manufacturer concerning a particular piece of glazing or whether the contract glazier must prepare a certificate which identifies the contract glazier as the fabricator, recites the date on which the fabrication took place, and states that the glazing has been manufactured by a particular company and certified by that company as complying with the glazing standard.

Section 14(a)(1) provides that "[e]very manufacturer of a product which is subject to a consumer product safety standard under [the CPSA]... shall issue a certificate which shall certify that such product conforms to all applicable consumer product safety standards..." (emphasis added). In view of this language, it is the opinion of the Office of the General Counsel that a contract glazier who is a manufacturer of a product because he fabricates (or assembles) the product must issue his own certificate. A certificate of compliance issued by the fabricator of a product should be furnished to each distributor or resaler who handles that product. If

ADVISORY OPINION

260

the product fabricator simply "passed on" the certificate issued by the manufacturer of the glazing material, a wholesaler or retailer relying on that certificate as a defense to an enforcement action under the Consumer Product Safety Act would not necessarily be able to establish that the certificate issued by the manufacturer of the glazing material relates to the products which are the subject of the enforcement action. The certificate must be in the form of a document (as explained in Advisory Opinion 248) and must be furnished to each distributor or retailer of the product (as explained in Advisory Opinion 255). The certificate may take the form of a document which accompanies each sale or delivery of products, or may be a continuing certificate of the type described in Advisory Opinion 248A. In issuing such a certificate, the contract glazier may rely on the certificate issued by the manufacturer of the glazing material and thus is not required to conduct his own tests. The certificate issued by the contract glazier would be required to include the information specified in section 14(a) of the Consumer Product Safety Act.

This view is consistent with the provisions of the proposed certification regulation for glazing materials published for comment in the Federal Register of December 16, 1978. That proposal at section 1201.33(g) [page 63598], provides that a fabricator need not test glazing if the fabricator complies with the certification provisions of proposed section 1201.36. You may wish to comment on this proposal in regard to its effect on building contractors and suggest alternate language you believe to be appropriate.

Sincerely,

Theodore J. Garrish
General Counsel

TURNEY & TURNEY
SUITE 1010
7101 WISCONSIN AVENUE
WASHINGTON, D. C. 20014
(301) 986-1410

JOHN R. TURNEY 1934-1973
WILLIAM O. TURNEY *
JIM D. MANN +
W. BRUCE WHITE, JR.

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NOV 14 1977
Consumer Product Safety Commission
Office of the General Counsel

November 10, 1977

Theodore J. Garrish, Esquire
General Counsel
Consumer Product Safety Commission
1111 - 18th Street, N.W.
Washington, D.C. 20207

Dear Mr. Garrish:

Thank you for your most informative opinion letter, dated November 4, 1977, on the issue of certification obligations of persons in the chain of distribution of architectural glazing materials. The last sentence invites a request for further clarification of questions raised by your letter. One such question does come to mind which merits your further attention.

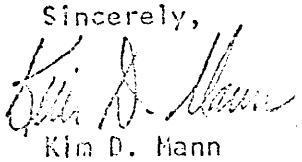
In the last full paragraph on page two of your letter you describe the certification obligations of a glazier towards a general contract or builder. You indicate "the firm which manufactured the products [the contract glazing firm] would be required to issue or transmit a certificate of compliance."

I must assume from the use of the disjunctive "or" that it is sufficient under section 14(a) of the Act for that contract glazier simply to pass along or "transmit" to the builder or the general contractor the certificate of compliance issued originally by the glass manufacturer. In other words, there is no piece of paper which the glazier must, under section 14(a), give the general contractor or builder which identifies the contractor glazier as the fabricator, recites the date on which the fabrication (installation) took place, and states that the glazing just installed has been manufactured by the PPG, LOF, Ford, or other named company and has been certified by that manufacturer as complying with CPSC Category I or II test requirements.

It is respectfully submitted that transmitting the original glass manufacturer's certificate to the general contractor or builder should be all that is required. Builders and contractors are, on the whole, sophisticated businessmen. They all maintain records to show what contract glazier did what portion of the subcontract glazing work on the building site and

on what date or dates that work was performed. The manufacturer's written certificate of compliance transmitted to these businessmen, in conjunction with those records, is more than sufficient to provide all the safety-related information necessary for an inspector or building owner. Any additional burden imposed on the glass installer and fabricator by requiring him to issue his own certificate simply is not justifiable.

Sincerely,



Kim D. Mann
General Counsel
Flat Glass Marketing Association

cc: Mr. William J. Birch
Alan H. Schoem, Esquire
Allen F. Brauninger, Esquire