MTR/PRVLBR NOTIFIED
✓ No comments made
___ Comments attached
___ Excisions/Revisions
✓ Firm has not requested further notice
LK 8/26/84

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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

February 23, 1978

RECEIVED FEB 23 3 31 PM '78 CONSUMER PRODUCT SAFETY COMMISSION

Mr. Roy F. Thorpe, President
Falcon Safety Products, Inc.
1137 U.S. Route 22
Mountainside, New Jersey 07092

Dear Mr. Thorpe:

With reference to my letter to you of January 11, 1978, concerning your inquiry about whether your company's marine boat horns are exempt from the Commission's regulation concerning labeling and reporting of consumer products containing chlorofluorocarbon propellants, I am now able to inform you that these products will be subject to the requirements of that regulation (16 CFR Part 1401). As I mentioned in my earlier letter, the "associated equipment" referred to in section 3(a)(1)(G) of the Consumer Product Safety Act is not exempt from being a consumer product unless the "risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under [the Federal Boat Safety Act of 1971]". The Office of Boating Safety, U. S. Coast Guard, has determined that the connection between the risk of injury addressed by Part 1401 and harm to the boating public is too remote to be regulated under that Act. A copy of their letter to us is enclosed for your information. Accordingly, self-pressurized boat horns that are consumer products, that contain chlorofluorocarbon propellants, and that are "initially introduced into interstate commerce" (as defined in § 1401.3(c)) after February 19, 1978, will be subject to the requirements of Part 1401.

Please do not hesitate to contact me if you have any further questions.

ADVISORY OPINION
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Sincerely,

Margaret A. Freeston

Margaret A. Freeston
Deputy General Counsel

Enclosure

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

MAILING ADDRESS: (G-BA-1)
U.S. COAST GUARD
WASHINGTON, D.C. 20590
PHONE: (202) 426-1080

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1 FEB 1978

Ms. Margaret A. Freeston
Deputy General Counsel
U.S. Consumer Product Safety Commission
Washington, D. C. 20207

Dear Ms. Freeston:

We have reviewed your letter of January 11, 1978, and the relevant regulation and statutes, and have decided that the risk of injury to the public through decreases in the stratospheric ozone layer is not a risk which we could reduce or eliminate in the name of boating safety. The connection between that risk and harm to the boating public is too remote. Therefore, we feel that boat horns operated by chlorofluorocarbon gas should be considered "consumer products" for purposes of that particular risk of injury. The horns are, however, "associated equipment" within the meaning of the Federal Boat Safety Act of 1971, and should other risks of injury to the boating public related to their use on boats or vessels come to our attention, those risks would be controlled or eliminated under the regulatory power delegated to the Coast Guard.

Sincerely,

D. F. LAUTH
Rear Admiral, U.S. Coast Guard
Chief, Office of Boating Safety

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FILE

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

January 11, 1978

Mr. Roy F. Thorpe
Falcon Safety Products, Inc.
1137 U.S. Route 22
Mountainside, New Jersey 07092

Dear Mr. Thorpe:

Your letter of November 10, 1977, in which you inquired about whether your company's Marine boat horns are exempt from regulation by the Commission by virtue of section 3-(a)(1)(G) of the Consumer Product Safety Act, has been referred to this office for a reply.

The general definition of the term "consumer product," set forth in section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)), includes any article or component part thereof produced or distributed (1) for the personal use, consumption, or enjoyment of a consumer in or around a household or residence, a school, in recreation, or otherwise or (2) for sale to consumer for use in or around a household or residence, a school, in recreation, or otherwise. As you are aware, however, certain articles are excluded from the definition. Section 3(a)(1)(G) excludes boats and appurtenances to vessels which could be subjected to safety regulation under marine safety statutes administered by the Department of Transportation. This section also excludes "equipment, (including associated equipment, as defined in section 3(8) of the Federal Boat Safety Act of 1971)" (46 U.S.C. § 1452(8)), which defines "associated equipment" as including:

> "(B) any accessory or equipment for, or appurtenance to, a boat; and
>
> (C) any marine safety article, accessory, or equipment intended for use by a person on board a boat;"

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From the definition of "associated equipment," it appears that the marine boat horns to which you refer are clearly associated equipment. However, the exclusion of section 3(a)(1)(G) applies only "to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under [the Federal Boat Safety Act of 1971]". Therefore, whether your product is subject to regulation by the Commission under the Consumer Product Safety Act depends upon whether the particular risk of injury addressed by the Consumer Product Safety Commission's regulation is one that could, as it relates to associated equipment, be addressed by the Department of Transportation.

In order to resolve this question, we have written to the Office of Boating Safety, U.S. Coast Guard, to obtain their opinion on whether this risk can be so regulated. The Commission will defer to their interpretation of the act that they administer.

I will advise you as soon as we have obtained an interpretation from the Office of Boating Safety. Please do not hesitate to contact me if I can be of any further assistance.

Sincerely,

Margaret A. Freeston

Margaret A. Freeston
Deputy General Counsel

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