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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

February 28, 1978

6(b) CLEARED: No mfr, product identified but
_____No Mfrs Identified
_____Excepted_____
_____Mfrs Notified
Comments Processed

Andrew H. Swartz, Esquire
Spiering, Scherzer and Swartz
Paseo Zabala - Suite A-3
550 Hartnell Street
Monterey, California 93940

Dear Mr. Swartz:

We have reviewed your letter of January 10, 1978 inquiring whether a commercial launderer and supplier of uniforms to hotels and industrial users would be required under the Flammable Fabrics Act (FFA) to supply flame retardant garments to its customers. The FFA is designed to protect persons from highly flammable articles of wearing apparel and fabrics. An article of wearing apparel is defined at section 2(d) of the FFA (15 U.S.C. 1191(d)) as "any costume or article of clothing worn or intended to be worn by individuals." No distinction is made as to types of clothing or the environment in which the clothing is worn. Therefore, it can be assumed that all articles of wearing apparel are intended to be covered, including those used in commercial environments.

Under authority of the FFA, the Commission has issued flammability standards and regulations which are set forth in the Code of Federal Regulations at 16 CFR 1602-1632. The standard of interest to you in this case, the Standard for the Flammability of Clothing Textiles, 16 CFR 1610, prescribes a test method for determining the flammability of textiles and textile products for clothing use. The standard does not specify the use of particular flame retardants. Nor does the standard require that items be tested prior to marketing. However, persons who engage in transactions involving products that are found not to conform to the standard, are subject to the

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administrative and judicial sanctions described at sections 5, 6, and 7 of the FFA (15 U.S.C. 1194-1196). Transactions prohibited under the FFA are set forth at section 3 of the FFA (15 U.S.C. 1192). Section 3(a) states,

> The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 4 of this Act, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

Although the Commission has not issued a formal opinion on the coverage under the FFA of rented articles of wearing apparel, it is the opinion of this office that rental of an item such as a clothing uniform could be considered a "delivery after a sale or shipment in commerce", as that term is used in section 3(a) of the FFA.

From the foregoing discussion, it can be concluded that your client is obligated to supply to his customers garments which comply with the FFA and the applicable standard. Further it appears that an agreement which purports to cover transactions that may be prohibited under section 3(a) of the FFA, would be of questionable validity.

Section 8 of the FFA may also be of interest here. This section describes the establishment of guaranties that reasonable and representative tests have been performed in accordance with an applicable standard. Section 8 does not require that

a guaranty be issued. However, a person who receives a guaranty in good faith, and has not by further processing affected the flammability of an item, shall not be subject to prosecution under section 7 of the FFA.

If you have any further questions on the coverage, under 16 CFR 1610, of specific items, or wish to discuss the matter of guaranties, please address your questions to the Office of Regulatory Management, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207.

Sincerely,

Margaret A. Freeston

Margaret A. Freeston
Deputy General Counsel

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AREA CODE 408
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January 10, 1978

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JAN 16 1978
Consumer Product Safety Commission
Office of the General Counsel

David Melnick
Attorney at Law
Consumer Product Safety Commission
Washington, D.C. 20207

Dear David:

We represent Del Monte Linen Supply of Pacific Grove, California, which is a commercial launderer and supplier of uniforms and garments. In that regard, they have consulted us with respect to whether or not it is obligated under the Flammability Fabrics Act to provide flame retardant garments to their commercial customers (such as hotels and industrial users) who either do not request or are unwilling to pay the extra cost for flame retardant protection.

I hereby request the Consumer Product Safety Commission staff to render a legal opinion on the duty of a commercial launderer and supplier to provide flame retardant items and whether or not the following clause is valid or void as contrary to federal law or public policy.

> "It is understood that Supplier has garments available for Customer which contain flame retardants. It is agreed that Customer does not desire flame retardant garments and agrees and understands that the garments rented hereunder are flammable."
>
> _____ Initials _____ Initials

I have carefully studied many other California commercial launderers' so-called "Rental Agreements" and have found no such standard clause or concern for the flammability of the garments or linens which they supply and launder. Apparently, the industry practice is to have available to all customers upon request, flame retardant garments and linens and to charge extra therefore. It is because of the extra charge, in my opinion, that many of the hotels and industrial users do <u>not</u> order flame retardant items.

I suppose the real question is whether a commercial supplier of garments such as maid uniforms, chef's hats, etc., has an affirmative duty to provide so-called high retardant garments to all of its customers, or some of its customers. We are attempting to avoid a negligence per se (violation of statute) situation.

Please forward this letter through appropriate channels , and provide us with a written response at the agency's very earliest convenience.

Thank you for your assistance.

Very truly yours,

SPIERING, SCHERZER & SWARTZ

ANDREW H. SWARTZ

AHS/aj