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ADVISORY OPINION
#265

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

X Identified
Processed

March 9, 1978

Frederick J. Ambrose, Esq.
Monaghan, Campbell, LoPrete and
McDonald
1732 Buhl Building
Detroit, Michigan 48226

Dear Mr. Ambrose:

This is in response to your inquiry of June 2, 1977 concerning the statutory responsibility of educational institutions that may sell laboratory equipment to individuals. Your letter was referred to our office by the Commission's Office of Communications. I apologize for the delay in providing you with a response. In your letter you asked for an opinion as to whether an educational institution has any statutory obligation to assure that those who might purchase such laboratory equipment are technically qualified to use the equipment in a safe and prudent manner.

The Commission administers five statutes involving product safety. The statute that appears to be applicable to the issue you raise is the Consumer Product Safety Act (CPSA). (15 U.S.C. 2051, et seq.) Under that Act the Commission can regulate "consumer products," as defined in section 3(a)(1) of the CPSA (15 U.S.C. 2052). The term "consumer product" includes any article produced or distributed for sale to or for the personal use, consumption or enjoyment of a consumer in or around a residence, a school, in recreation or otherwise. Excluded from this definition are items that are not customarily produced or distributed for sale to or use, consumption or enjoyment by consumers.

Section 15 of the CPSA (15 U.S.C. 2064) requires manufacturers, distributors, and retailers of consumer products to immediately inform the Commission of products that could create substantial product hazards. Section 15(b) defines a "substantial product hazard" as (1) a failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public, or (2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public. The Commission has issued no consumer product safety rules applicable to laboratory equipment.

The Commission has issued regulations concerning substantial product hazard notifications at 16 CFR 1115 and policies and procedures regarding substantial product hazards at 16 CFR Part 1116. The Commission has also proposed reporting requirements under section 15 at 42 FR 46720, September 16, 1977. These regulations have not been issued in final form. Copies of these documents are enclosed.

Our office believes that educational institutions selling laboratory equipment to individuals as described in your letter could be considered retailers within the meaning of section 3(a)(6) of the CPSA (15 U.S.C. 2052(a)(6)), and thus would be subject to the requirements of section 15 of the Act for products they sold that were consumer products, as defined in section 3(a)(1) of the Act (15 U.S.C. 2052(a)(1)). It would appear that in general, laboratory equipment for use in schools would be considered consumer products. However, determinations as to the status of particular products would have to be made on a case-by-case basis, depending on such factors as the marketing patterns of the product. Although the Commission has not yet made a final decision on this point and has not applied this principle to an individual manufacturer, we believe that the failure to provide buyers or users with adequate warnings or instructions concerning the safe method of using a product could constitute a substantial product hazard within the meaning of section 15(a)(2) of the Act, if the failure to furnish such warnings or instructions created a substantial risk of injury to the public. The Commission's proposed regulation,

at section 1115.3(b)(3) defines "defect" within the meaning of section 15 as any aspect of a product which creates an unnecessary risk of injury, including, but not limited to, warnings and instructions.

In your letter you asked the specific question whether those persons selling laboratory equipment have a statutory obligation to assure that those who might purchase the equipment are technically qualified to use the equipment in a safe and prudent manner. Our office does not in general, believe that section 15 of the Act imposes this obligation upon persons selling laboratory equipment. However, the particular facts of each individual case would have to be examined before a decision could be arrived at concerning this interpretation.

I hope that this letter has been responsive to the question you asked. If you have any additional questions please do not hesitate to contact me.

Sincerely,

Theodore J. Garrish
General Counsel

JOSEPH N. MONAGHAN
HENRY M. CAMPBELL
JAMES H. LoPRETE
PATRICK A. McDONALD
JOHN H. NORRIS
DAVID W. SOMMERFELD
RONALD R. SOGGE
MICHAEL J. CHARBONNEAU
FREDERICK J. AMROSE
GEORGE A. SUMMERFIELD, JR.

MONAGHAN, CAMPBELL, LoPRETE & McDONALD
ATTORNEYS AND COUNSELORS
1732 BUHL BUILDING
DETROIT 48226
(313) 961-0473

PETER J. MONAGHAN
MARION H. CRAWMER
OF COUNSEL

OAKLAND COUNTY OFFICE
1411 N. WOODWARD
BIRMINGHAM, MICHIGAN 48011
(313) 642-5770

June 2, 1977

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Consumer Product Safety Commission
Washington, D.C. 20207

Gentlemen:

We represent an educational institution which occasionally may consider selling obsolete laboratory equipment to students, staff or members of the public.

Pursuant to the Freedom of Information Act, 5 USC §552 and the regulations of the Commission promulgated pursuant thereto, kindly furnish us with copies of any documents which would indicate whether the Consumer Product Safety Commission asserts that it has jurisdiction for any purposes over such sales.

Consulted

We are particularly interested in the opinion of the Commission as to whether an educational institution has any statutory obligation to assure that those who might purchase such laboratory equipment are technically qualified to use same in a safe and prudent manner.

For O.G.C. Advice

To minimize any inconvenience to your office, we hereby waive the 10 day requirement of the Freedom of Information Act.

Very truly yours,

MONAGHAN, CAMPBELL, LoPRETE & McDONALD

Frederick J. Amrose

FJA:ljs

Frederick J. Amrose

RECEIVED
AUG 30 1977
Consumer Product Safety Commission
Office of the General Counsel

In reply refer to: C 77060227

July 1, 1977

Re: Lab Equipment

Frederick J. Amrose
Monaghan, Campbell, LoPrete & McDonald
1732 Buhl Building
Detroit, Michigan 48226

Dear Mr. Amrose:

Thank you for your letter to the Consumer Product Safety Commission in which you ask about our jurisdiction of sales of obsolete laboratory equipment to consumers. I understand you represent an educational institution which might undertake such sales, and you want to know what statutory obligation that institution might have.

I am enclosing several documents about the Consumer Product Safety Commission and our powers. You might be particularly interested in information about Section 15 of the Consumer Product Safety Act which requires industry to report any substantial product hazard to the Commission. However, I cannot give you a definitive answer regarding the sale of lab equipment by an educational institution.

Therefore, I will refer your letter to our Office of General Counsel. They may be able to give you the precise answer you need.

Sincerely,

Ken Giles, Consumer Services Branch
Consumer Response and Information Division
Office of Communications