ADVISORY OPINION No. 270

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UNITED STATES GOVERNMENT

Memorandum

TO : Eric Stone, CEPD
Margaret A. Freeston, ~~Acting General Counsel~~
Stephen Lemberg, Assistant General Counsel OSL

FROM : Harleigh Ewell, Attorney, OGC HPEwell

DATE: October 3, 1978

SUBJECT: Request for Jurisdictional Opinion on Life Preservers

This is in response to your inquiry of September 28, 1978, concerning the Commission's jurisdiction over life preservers.

As you know, section 3(a)(1)(G) of the CPSA provides that the term "consumer product" does not include "(. . . associated equipment, as defined in section 3(8) of the Federal Boat Safety Act of 1971) [the FBSA] 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 action taken under [the FBSA]."

Life preservers intended for use on boats would clearly fall within the definition of associated equipment (46 U.S.C. 1452(8)(B,C)). Under the FBSA (46 U.S.C. 1454), the Secretary of the Department of Transportation may establish safety standards for associated equipment and prohibit the installation, carrying, or using of associated equipment which does not conform with such safety standards. This authorizes DOT to issue standards concerning the performance of life preservers. Whether these products are actually regulated under this authority is immaterial.

The marketing and use patterns of particular life preservers might be relevant in the following regards toward showing that they were consumer products:

1. To establish that the life preservers are not intended for use on boats.

2. That a market exists that is independent of the use of the product on boats, and that therefore, action taken under the FBSA would not adequately reduce the risk.

3. That the particular risk being addressed is not one that is "associated with the use of such equipment on boats".

We would deem the risk of drowning while wearing a life preserver to be a risk that is associated with the use of such equipment on boats, even though it may also be associated with the product in other circumstances. Therefore, in the absence of any indication that either factor 1 or 2 above applies, we would conclude that life preservers are excluded from the definition of "consumer products" under the CPSA.

Please contact me if you have any further questions.