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CONSUMER PRODUCT
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ADVISORY OPINION

#274

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

6(b) CLEARED:
✓ No Mfrs Identified
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November 22, 1978

Jon M. Brown, Esquire
Edris, Dale and Brown
328 West Market Street
P.O. Box 261
Bluffton, Indiana 46714

Dear Mr. Brown:

This is in response to your letter dated October 13, 1978, concerning the meaning of the term "private labeler" as it is used in the Consumer Product Safety Act.

In your letter, you asked if a trade association becomes a "private labeler" if it allows its members to display the association's name, logotype, or trademark on containers of cellulose insulation.

The term "private labeler" is defined in § 3(a)(7)(A) of the Consumer Product Safety Act to mean "an owner of a brand or trademark on the label of a consumer product which bears a private label." [Emphasis added]

Section 3(a)(7)(B) provides further that a consumer product "bears a private label" if all of the following conditions are present:

> (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label. [Emphasis added]

Consequently, in the view of this office, a trade association would not become a private labeler if its name, logotype, or trademark appears on containers of cellulose insulation, as long as the containers clearly display the brand or trademark of the firm which manufactured the product or the brand or trademark of a private labeler. However, if the trade association's name, logotype, or trademark were the only brand or trademark on the container, the association would be a "private labeler" of that product for the purposes of the Consumer Product Safety Act.

This opinion represents the views of the Office of the General Counsel and has not been reviewed or approved by the Commission.

Sincerely,

Margaret A. Freeston

Margaret A. Freeston
Acting General Counsel

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October 11, 1978

Mr. Al Brauniger
Office of the General Council
Consumer Product Safety Commission
Washington, D. C. 20207

Re: Cellulose Insulation Standard

Dear Mr. Brauniger:

This letter is a follow-up to a verbal discussion we had at the Consumer Product Safety Commission public briefing on the Cellulose Insulation Standard held in Chicago, Illinois on August 22, 1978. At that time, you requested me to submit my specific inquiry in writing, which inquiry is as follows:

> Would the term "private labeler" as used in the Act encompass a trade association which allows its members to display on their insulation containers the association's logo (trademark)?

In other words, is a trade association subject to the sanctions of the Act by the mere act of allowing its logo to be used on packaging?

At your earliest convenience, I will appreciate an opinion from your office, and your cooperation in this regard is appreciated.

Yours very truly,

EDRIS, ~~DALE~~ AND BROWN

Jon M. Brown
General Counsel, Cellulose
Insulation Manufacturers Association

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