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12 SEP 1973

Honorable Antonin Scalia
Chairman
Administrative Conference
of the United States
2120 L Street, N.W. Suite 500
Washington, D.C. 20037

Dear Mr. Scalia:

I am replying to your correspondence of July 31, 1973, to Chairman Richard O. Simpson. In that letter you submitted "Recommendation 73-1: Adverse Agency Publicity," which was adopted by the Administrative Conference at its Ninth Plenary Session. You requested that the Commission inform you of the extent to which its rules and practice now accord with the proposals of Recommendation 73-1, and of the steps we contemplate taking to achieve further implementation.

The Commission is currently in the process of drafting procedures and regulations concerning various aspects of its operations. Among the procedures to be drafted are those pertaining to the use of "adverse publicity." We are, however, currently guided by the requirement of section 6(b) of the Consumer Product Safety Act which provides that not less than thirty days prior to publicly disclosing information concerning a consumer product which would permit the public to ascertain readily the identity of a manufacturer or private labeler, the Commission shall notify such manufacturer or private labeler and provide them with an opportunity to submit comments with regard to such information. Further, that section provides that if the Commission in the administration of the Act discovers that it has made public disclosure of inaccurate or misleading information which reflects adversely on the safety of a consumer product, or the practices of any manufacturer, distributor, or retailer of the product, the Commission is to publish a retraction in a manner similar to that in which the original disclosure was made.

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Additionally, section 30(e)(2) of the Act provides in pertinent part that all rules and regulations which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

This means that rules and practices of the Federal Trade Commission, the Department of Health, Education, and Welfare, and the Department of Commerce which pertain to "adverse publicity" as it affects the Acts transferred from those Agencies (Flammable Fabrics Act, Poison Prevention Packaging Act of 1970, Federal Hazardous Substances Act) are applicable to this Commission until changed in the manner provided in the Act.

We realize the powerful impact that publicity may have on both those who are regulated and those whom a regulation is intended to protect. We are also aware of the need for rules which specify standards and guidelines governing the issuance of publicity. Your recommendation to this effect, as well as any other recommendations we might receive, will be given our closest consideration. We appreciate your interest and concern in this matter and will advise you of any action taken in regard to your recommendation.

Sincerely,

Michael A. Brown

Michael A. Brown,
Acting General Counsel

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ASchoem
Chairman Simpson
Office of the Secretary