28 SEP 1973

Charles E. Rauh, Esquire
Rauh, Thorne & Robinson
315 West First Street
Hutchinson, Kansas 67501

Dear Mr. Rauh:

Your letter dated September 14, 1973, addressed to Congressman Garner E. Shriver, concerning the applicability of the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) to a client of yours was forwarded to this Commission by Congressman Shriver for a response.

In your letter you stated that you represented a local manufacturer of boilers, who sold his product to commercial enterprises, occasionally to schools, and rarely, if ever, to consumers. You inquired as to the applicability of the Act to your client's business.

"Consumer product" is defined in section 3(a) of the Act as any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around or permanent or temporary household or residence, a school, in recreation, or otherwise.

You expressed confusion as to the scope of the word "otherwise" as used above and requested information from the House or Senate reports on the meaning of this language as used in the definition of "consumer product."

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28 SEP 1973

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The legislative history of the Act states in relevant part:

> "It is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use. Thus, products which are manufactured for lease and products distributed without charge (for promotional purposes or otherwise) are included within the definition and would be subject to regulation under this bill. Also, products which are primarily or exclusively sold to industrial or institutional buyers would be included within the definition of consumer product so long as they were produced or distributed for use of consumers.
>
> It is not intended that true 'industrial products' be included within the ambit of the Product Safety Commission's authority. Thus, your committee has specifically excluded products which are not customarily produced or distributed for sale to or use of consumers. The occasional use of industrial products by consumers would not be sufficient to bring the product under the Commissions, jurisdiction. The term 'customarily' should not be interpreted as intending strict adherance to a quantum test, however, your committee is aware that some products which were initially produced or sold solely for industrial application have often become broadly used by consumers. If the manufacturer or distributor of an industrial product fosters or facilitates its sale to or use by consumers, the product may lose its claim for exclusion if a significant number of consumers are there by exposed to hazards associated with the product." [H.R. Rep. 92-1153, 92d Cong., 2d Sess 218 (1973)]

In view of the foregoing it can be seen that it is possible that industrial products could be within the jurisdiction of the Consumer Product Safety Commission depending upon the

circumstances of the particular case. Without more detail concerning your client's sales, we are unable to provide a more definitive answer.

Please let me know if I may be of further assistance.

Sincerely,

Michael A. Brown

Michael A. Brown
Acting General Counsel

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September 14, 1973

Honorable Garner E. Shriver
House of Representatives
Washington, D. C.

Dear Garner:

I represent a local manufacturer of boilers. By and large, these boilers are sold to commercial enterprises although some of them do go to schools. In some cases the boilers are sold to a dealer who in turn sells to commercial enterprises. Few, if any, of the boilers are ever sold to consumers as such.

I have been asked about the applicability of Public Law 92-573; 86 STAT. 1207. This is cited as the "Consumer Product Safety Act".

My question concerns the applicability of this statute to my client's business, and I am a little confused about Section 3 "DEFINITIONS". That act reads as follows:

"(a) For Purposes of this Act:
(1) The term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, comsumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include--

(A) Any article which is not customarily produced or distributed for sale or consumption by, or enjoyment of, a consumer,....

You will notice that the words "in recreation, or otherwise" are used above, and I just am at a loss to determine how extensive the use of the word "otherwise" is meant.

I wonder if you could furnish me any information from the House Reports or the Senate Reports as to the meaning of this language since the definitions do not go ahead and spell out the meaning of these terms?

Thank you for your assistance in this matter, and with kindest personal regards.

Yours very truly,

RAUH, THORNE & ROBINSON

By:

CER/kd