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NOV 2 0 1973

[redacted]
[redacted] Illinois [redacted]

Dear Mr. [redacted]

This is in reply to your letter dated September 11, 1973, in which you inquired as to the jurisdiction of the Consumer Product Safety Commission over products produced by [redacted]

The primary purpose of the Commission is to protect the public against unreasonable risks of injury associated with consumer products. In this regard, the term "consumer product" is defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052, as any article, or component part thereof, produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.

Section 3(a)(1)(C) of the CPSA excludes from the meaning of "consumer product" motor vehicle equipment as defined by section 102(4) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391 et seq.). Motor vehicle equipment is defined in that Act as:

> "...any system, part, or component of a motor vehicle as originally manufactured or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as any accessory, or addition to the motor vehicle, and any device, article, or apparel not a system, part or component of a motor vehicle (other than medicines or eyeglasses prescribed by a physician or other duly licensed practitioner) which is manufactured, sold, delivered, offered, or intended for use exclusively to safeguard motor vehicles, drivers, passengers, and other highway users from risk of accident injury or death."

There may be areas where the jurisdiction of the National Highway Traffic Safety Administration (NHTSA) and the Consumer Product Safety Commission (CPSC) overlap. For example, an item might be used in a recreational vehicle, as well as a home. In this event, the item would be both "motor vehicle equipment" and a "consumer product" and the CPSC and the NHTSA would have concurrent jurisdiction. On the other hand, items used exclusively in recreational vehicles and which were not sold to a consumer for use in or around the home, a school, in recreation or otherwise, or which could not be used by a consumer in or around a home, a school, in recreation, or otherwise, would be subject to regulation solely by the NHTSA.

In view of the foregoing, we shall proceed on a case-by-case basis in determining our jurisdiction over various equipment. If the equipment in question falls within the meaning of "consumer product" as defined in section 3(a)(1) of the CPSA but is also motor vehicle equipment as defined in section 102(4) of the National Traffic and Motor Vehicle Safety Act of 1966, the CPSC and the NHTSA will coordinate their activities and exercise concurrent jurisdiction. In that case, the manufacturer, distributor or retailer of the particular product will be subject to the reporting provision of section 15(b) of the CPSA, 15 U.S.C. 2064, as well as any regulations promulgated by the NHTSA.

In regard to your specific question concerning the combination furnace and water heater which [redacted] produces, if that product is sold and used exclusively in recreational vehicles, the CPSC would not have jurisdiction over it. If, however, the combination furnace and water heater, or any component part thereof, is produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or produced or distributed for the personal <u>use</u>, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, the CPSC does have jurisdiction, and [redacted] is required to report to the Commission pursuant to section 15(b) of the CPSA. Included in the preceding definition are components, equipment, or appliances sold with, or used in or around, a mobile home.

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

Sincerely,

Michael A. Brown
General Counsel

ASchoem:mli:11/14/73

cc: Mr. Richard Dyson
Deputy Chief Counsel
NHTSA

A. Schoem
GC Files
GC Chron

Terri - Hold for meeting with DOT
LWB

[redacted]

[redacted]

TELEPHONE [redacted]

September 11, 1973

Mr. Michael Brown
Attorney at Law
7315 WisconsinAve., East Tower
Bethesda, Maryland 20207

Re: [redacted]
[redacted], Illinois - Consumer
Product Safety Commission

Dear Mr. Brown:

Pursuant to our conversation of yesterday, please be advised that my client, [redacted] is concerned in the following matter. [redacted] produces a combination furnace and water heater which it sells for installation in recreational vehicles. These vehicles are strictly either towed or self-propelled by mechanical means. The particular ones involved were not for installation in mobile homes or other than what has been defined as motor vehicles under Paragraph 3 of Section 1391 Title 15 USCA. [redacted] has found that after extensive use on the highway, the vibration has caused some ruptures in the gas line to these particular appliances. [redacted] had reported under the National Motor Vehicle Safety Standards Act and subsequently telephoned to the Consumer Products Safety Agency out of a concern as to which agency had jurisdiction. Since then, the Consumer Products Safety Agents have been to the [redacted] plant and have requested various information including engineering data, etc.

My client is quite willing to cooperate and comply with whichever Act has jurisdiction. We do not feel, however, that they should be required to comply with both the National Motor Vehicle Safety Act under the jurisdiction of the Secretary of Transportation and the Consumer Products Safety Act. It would appear that this particular product would be included in the definition of motor vehicle equipment under Paragraph 4 Section 1391 of Title 15 USCA (Motor Vehicle Safety Standards Act). Such motor vehicle equipment are expressly exempted under Sub-section C, Paragraph (1) Sub-section (a) Section 2052 Title 15 USCA.

It is my understanding that you will consult with your counterpart at the Department of Transportation and agree on which agency has jurisdiction over the appliance which I have mentioned which is used solely in recreational vehicles and will let me know. At the same time I might mention we have other products which fall in the same questionable area of jurisdiction such as the hitch and hitchball, for instance, for the pulling of a mobile home. We have assumed that these items also are included under the jurisdiction of the Department of Transportation.

In the meantime, until I receive your instructions in this matter, I have admonished my client to advise the Consumer Product Safety Agents that we will comply with whichever agency has jurisdiction as soon as the determination has been made. We will continue with our program of notification, recall and repair through our distributors.

Very truly yours,

[redacted]

DFC:gs

September 27, 1973

. S. This letter has been returned twice by the Post Office so we'll try once again.

In the meantime, it is my understanding you have successfully straightened this matter out.

[redacted]