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4 JAN 1974

Mr. James B. Donald
Senior Merchandise Manager
Ely and Walker
823 East Holmes Road
Memphis, Tennessee 38116

Dear Mr. Donald:

Chairman Simpson has asked me to respond to your letter of November 12 in which you raise questions about the proposed standard for the Flammability of Children's Sleepwear, Sizes 7 through 14 and the preemption provision of the Flammable Fabrics Act.

We are currently preparing the final Standard for the Flammability of Children's Sleepwear in Sizes 7 through 14. This standard should be published within the next few months.

As to your question about preemption, there has never been a judicial determination of the extent of the preemption section of the Flammable Fabrics Act (15 U.S.C. 1191, 1203). That section states that the Act "is intended to supersede any law of any state or political subdivision thereof inconsistent with its provisions."

Until the court system provides a definitive interpretation as to what action may or may not be lawfully undertaken by a state, the question of whether an action taken by a state is preempted by the Flammable Fabrics Act is one of individual interpretation. This does not mean, however, that anyone who believes himself to be injured by state action is powerless. Any party may sue to enforce the preemption provision. For example, recently in Massachusetts the American Apparel Manufacturers Association sued the State of Massachusetts alleging both a violation of the Constitution and the preemption provision of the Flammable Fabrics Act. This case will be heard by a three judge federal court and should provide for all concerned parties—private, state and federal—federal judicial guidance on the extent of the preemption section's coverage.

Please let us know if you have any other questions.

Sincerely,

/s/ AHS

for Michael A. Brown
General Counsel

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