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Halfpenny, Hahn & Roche
111 West Washington Street
Chicago, Illinois 60602

Dear Mr. Halfpenny:

This letter is in response to your correspondence of January 21, 1974, written on behalf of the Independent Battery Manufacturers Association, Inc., in which you inquired as to the Consumer Product Safety Commission's jurisdiction over batteries. Pursuant to your conversation with Mr. Alan H. Schoem of my office, I understand that you are concerned about automobile and industrial type batteries, as opposed to flashlight and similar type batteries.

Section 3(a)(1)(c) of the Consumer Product Safety Act (CPSA) excludes from the Commission's jurisdiction, motor vehicles and motor vehicle equipment as defined by sections 102(3) and 102(4) of the National Traffic and Motor Vehicle Safety Act (NTMVSA) of 1966. Since automobile batteries fall within the NTMVSA's definition of motor vehicle equipment, they are excluded from coverage under the CPSA so long as they are used exclusively in motor vehicles as defined in that act. On the other hand, batteries used in products such as snowmobiles and minibikes, which do not fall within the definition of motor vehicle as defined in the NTMVSA, would be subject to the jurisdiction of the Commission.

In regard to batteries produced for industrial use, section 3(a)(1)(A) of the CPSA excludes from the Commission's jurisdiction any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer. In this regard, the legislative history of the Act, states:

> 'Products which are primarily or exclusively sold to industrial or institutional buyers would be included within the definition of consumer product as long as they were produced or distributed for <u>use</u> 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.... If the manufacturer or distributor of

ADVISORY OPINION

an industrial product fosters or facilitates its sale or use by consumers, the product may lose its claim for exclusion if a significant number of consumers are thereby exposed to hazards associated with the product."

In view of the foregoing, it would depend on the marketing and use of industrial type batteries as to whether the Commission can exercise jurisdiction over them under the CPSA.

I trust that this information is helpful to you. Please let me know if I may be of further assistance.

Sincerely,

Original signed by
Michael A. Brown

Michael A. Brown
General Counsel

AHSchoem:clb:2/21/74 GC-#2923

cc: Chairman Simpson
Secretary
Executive Director
A. Schoem
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