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FILE

- CPSA Sec. 3(a)(1)



(Power Lawn Mowers)

#295

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D. C. 20207

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18 Feb 1983

OFFICE OF THE
GENERAL COUNSEL

E.L. Stephenson, Esq.
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Newport News, Virginia 23601-0003

Dear Mr. Stephenson :

This letter responds to your letter of December 21, 1982, in which you request a determination of whether the Solo 549 Lawn Mower is a consumer product and thus subject to the Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. Part.1205. Although the available information is not conclusive, there are indications in the data you submitted that this mower may be a consumer product.

The term "consumer product" is defined in 15 U.S.C. § 2052 (a) (I), and does not include "any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer." The legislative history of this section indicates that products that are not used more than occasionally by consumers are not consumer products. H.R. Rep. No. 1153, 92d Cong., 2d Sess. 27 (1972). In general, we have established no specific criteria to determine whether consumers use a product more than occasionally. Instead, we review all available information relevant to a particular determination.

In the case of the Solo 549 mower, there does not appear to be any feature of the mower that would render it unsuitable for consumer use. In fact, the same features that would appeal to a commercial user, such as durability, would also be attractive to a consumer. The high price of the mower would probably ensure that consumers would not purchase this mower in large numbers, but some consumers may find the price acceptable in view of the advantages over the more usual consumer mower.

ADVISORY OPINION

From the sales literature you submitted, it appears that the Solo 549 mower is sold by the same dealers that handle the consumer product lawn mowers sold by Solo. In fact, the same sales literature is used both for the 549 and the **other** products. I would note that the promotional sheet that is used for both the 549 and the 581, and that carries a notation that the sheet is used at the present time, states that the users of the 549 include "last but not least, residential users, who can rely on this mower for smooth lasting performance, year after year."

The warranty card data do not establish that the 549 is not used more than occasionally by consumers since such a small portion of the sales have resulted in returned warranty cards. Furthermore, of the 16 cards that were returned, one (Larry W. Morford) **would** seem to be for a consumer use and another (**Willion** Broderick) does not seem to indicate that **it** will be used for commercial purposes.

In order to ensure that their mowers are not consumer products, at least one manufacturer of a commercial mower has indicated that, he has instructed his dealers that it is company policy not **sell** their mowers to consumers and that any dealer found violating this policy would be terminated as a dealer. In addition, that manufacturer indicated that his mowers would be labeled to indicate that the mowers were not intended for consumer use. We further suggested that the suggested label should include an indication that the mowers did not comply with the mandatory safety standard applicable to consumers mowers. Since this manufacturer's mowers had features that would not appeal to consumer use and were sold through farm equipment dealers and not through consumer-oriented outlets, we were able to conclude that the **company** policy and labeling should be sufficient to ensure that the use and distribution patterns for that mower would **not** render it a consumer product. From the information currently available, it is not clear that **similar** steps for the **Solo 549** would enable us to conclude that it would not be **sold** more than **occasionally** to consumers.

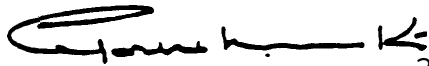
Other manufacturers have indicated that they could control the sale of their mowers so as to ensure that none of their "commercial" mowers would be sold for other than commercial use. If **Solo** is able to achieve this degree of control over the sales of the 549 mower, we would not consider that **mower** to be a consumer product.

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I should point out in addition that our opinions on whether particular products are consumer products are generally based on the information supplied by the requesting party, and if information showing different use and distribution patterns became available, our determination could change.- We view these opinions as ninterpretation of the definition of consumer product based on a particular set of facts and not as an authorization to produce a particular model that does not comply with the standard.

I hope the above discussion clarifies our views on the meaning of the term "consumer product." Please do not hesitate to contact me if you have any questions or can supply any further information that 'could aid in determining whether the Solo 549 is a consumer product

Sincerely,

A handwritten signature in black ink, appearing to read "Martin H. Katz", with a stylized flourish at the end.

Martin Howard Katz³
General Counsel