



U. S. C O N S U M E R P R O D U C T S A F E T Y C O M M I S S I O N

WASHINGTON, D. C. 20207

February 5, 1985

OFFICE OF THE  
GENERAL COUNSEL

James J. Kriva, Esq.  
Kasdorf, Dall, Lewis & Swietlik, S.C.  
1551 South 108th Street  
Milwaukee, Wisconsin 53214

Dear Mr. Kriva:

This is in response to your letter of January 3, 1985, to Alan Schoem of this office concerning whether a particular brand of infra-red heat lamp is a consumer product subject to the jurisdiction of the Commission.

The term "consumer product" is defined in section 3(a)(1) of the Consumer Product Safety Act, 15 U.S.C. § 2052(a)(1), 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." 15 U.S.C. § 2052(a)(1)(A). 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.

Based on the information supplied in your letter, we would conclude, at least preliminarily, that the subject heat lamp is a consumer product.. The product's packaging shows illustrations of a woman warming her upper back and shoulders with a lamp; also, a woman dressed like a housewife is shown with a lamp near what appears to be a home-type freezer or refrigerator. Further, the packaging refers to "many farm and home uses" and states precautions for "when using for personal, household, or family."

Your letter also states that the heat lamp is sold "through hardware stores, department stores, and household and farm retail sales outlets throughout the United States." The price of the product is well within the reach of consumers.

6(b) CLEARED: 2/5/85

☒ No Mfrs Identified  
☐ Excepted  
☐ Mfrs Notified  
☐ Comments Incorporated  
*pm*

ADVISORY OPINION #303

Considering these factors together, we conclude that these heat lamps are consumer products. However, the controlling considerations are the actual use and distribution patterns for this model product. If data showing different use and distribution patterns become available, our determination could change.

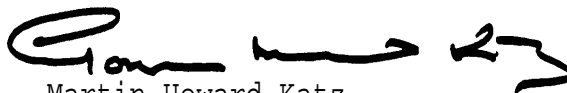
Two other factors are worthy of note. First, if this product were deemed a (medical) 'device' as that term is defined at 21 U.S.C. § 321(h), it would be excluded from the definition of consumer product by 15 U.S.C. § 2052(a)(1)(H). "Devices" are regulated by the Food and Drug Administration (FDA), which looks primarily at the marketing claims made for the product. We do not believe that FDA would consider a claim that a product provides "soothing" heat to be sufficient to make the product a device.

Also, the Commission would not have authority to regulate this product if the risk were "associated with electronic product radiation emitted from an electronic product," as such terms are defined in 42 U.S.C. § 263c, if the risk can be regulated under 42 U.S.C. §§ 263b-263n. 15 U.S.C. § 2080(a). While infra-red rays from a heat lamp bulb are considered to be electronic product radiation from an electronic product, our understanding is that 42 U.S.C. §§ 263b-263n, which is administered by FDA, can regulate risks associated with electronic product radiation only where they are due to exposure to the radiation, and not where the risk is indirect, as where the product causes a fire.

For the reasons stated above, therefore, we conclude that these heat lamps would not be excluded from the Commission's jurisdiction by either 15 U.S.C. § 2052(a)(1)(H) or 15 U.S.C. § 2080(a).

The views expressed in this letter are those of the Office of General Counsel and are based upon the most current interpretation of the law by this office; however, these views could be changed or superseded by the Commission. Please do not hesitate to contact me if you have further questions regarding these matters.

Sincerely,



Martin Howard Katz  
General Counsel