



#311

## U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D. C. 20207

April 16, 1990

OFFICE OF THE  
GENERAL COUNSEL

Mr. Bernie Reamer  
Legal Assistant  
Richard H. Powell, P.A.  
P.O. Drawer 2167  
92 Eglin Parkway, N.E.  
Fort Walton Beach, Florida 3254902167

☒ Cleared  
4/30/90  
☒ No Mfrs/Prvtlblrs or  
products identified  
- Excepted -  
Firms Notified,  
Comments Processed.

Re: Your Clients: Randy and Sharon Carpenter

Dear Mr. Reamer:

This is in response to your letter dated March 15, 1990 concerning an incident that involved a wolf-hybrid dog. You noted that a CPSC advisory opinion issued in 1974 (No. 78) concluded that pet turtles are consumer products under the Consumer Product Safety Act ("**CPSA**"), 15 U.S.C. 2051 et seq., and you inquired whether any other animals would be considered consumer products.

It is the view of the Office of the General Counsel that a wolf-hybrid dog would not be a consumer product under the CPSA. We have re-examined the 1974 opinion concerning pet turtles, and believe that Congress did not intend to include live animals, as such, within the definition of a "**consumer product**," subject to the CPSA.

The statute defines a consumer product as "**any** article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) 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...." The 1974 opinion focused on the word "**article**" used in the statutory definition of the term "**consumer product**," rather than on the concept of "**product**," which is also included in the statute and must be considered in this inquiry. 15 U.S.C. § 2052 (a) (1).

Upon reconsideration, it is not clear whether the term "**article**" includes or excludes turtles; however, the use of the

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term **\*\*product\*\*** would seem to connote something processed or manufactured. See generally Black's Law Dictionary (5th ed. 1979) (referring to products as **\*\*goods produced or manufactured either by natural means, by hand, or with tools, machinery, chemicals, or the like\*\***). From this definition, it appears that living animals, as such, are not consumer products. It is conceivable that an animal somehow subjected to processing could be a consumer product. However, we do not now decide that issue, as a determination in such a case would depend on the particular facts presented.

There is no indication in the legislative history of the CPSA that Congress intended to include pets or other animals within the definition of **\*\*consumer products\*\***. We are unable to find any reference to pets in the legislative history. Rather, the products that Congress did single out are such things as architectural glass, televisions, furnaces, bicycles, infant furniture, power tools, lawnmowers, and other manufactured goods. 118 Cong. Rec. H8568 (Sep. 20, 1972) (statement of Rep. Staggers). The Report of the House Commerce Committee expressed concern with **\*\*product-related injuries\*\***. See, e.g., House Report at 21. The House Report frequently refers to the impact upon, and participation of, **\*\*industry\*\*** and **\*\*manufacturers\*\***. See, e.g., House Report at 26. Use of these terms supports the view that Congress was not thinking of items that are not capable of being manufactured or processed, such as live animals, when it devised this legislation. See also 15 U.S.C. § 2051 (a)(4). Similarly, the floor debates on the legislation and later proposed amendments also support this interpretation. See 118 Cong. Rec. H8566 (Sep. 20, 1972) (statement of Rep. Staggers) (discussion of participation by **\*\*industry\*\***); 118 Cong. Rec. S9930 (June 21, 1972) (statement of Sen. Eagleton) (discussion of **\*\*manufacturing defects\*\***); 121 Cong. Rec. H7780 (July 29, 1975) (statement of Rep. McClory) ("My understanding is that it deals with products, that is, manufactured products").

Provisions of the statute itself support the view that Congress intended the CPSA to apply to items that are manufactured or processed, rather than to live animals as such. For example, section 15 of the CPSA establishes a system of notification if a consumer product presents a substantial product hazard. The section places responsibility on every person involved with the product in the chain of commerce. The statute divides the chain of commerce into the categories of manufacturers, distributors and retailers. 15 U.S.C. § 2064. As these terms are defined in the CPSA, distributors and retailers must be persons "to whom a consumer product is delivered or sold." 15 U.S.C. § 2052(a)(4) and (5). Thus, since all

distributors and retailers must receive the product from someone else, all products must originate with a manufacturer, which is the only other category in the chain of commerce.

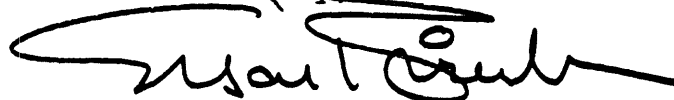
A **\*\*manufacturer\*\*** is **"any person who manufactures or imports a consumer product."** Id. § 2052(a)(4). The term **\*\*manufactured\*\*** is defined as **"to manufacture, produce, or assemble."** Id. § 2052(a)(8). As the intent of section 15 is to include **all** persons in contact **with** a consumer product through the chain of commerce, and as this chain originates with a **\*\*manufacturer,\*\*** it follows that a live animal that has not been manufactured or processed in some manner is not included within the term **\*\*consumer product.\*\***

The Final Report of the National Commission on Product Safety (**"Commission Report"**), which was the foundation for the CPSA, lends further support to the view that live animals should not be considered **\*\*consumer products\*\*** within the CPSA. The Commission looked at injury statistics for such products as appliances, home furnishings, home fixtures, recreational equipment, heating devices, home tools, cleaning products, clothing, cosmetics, and pesticides. Commission Report at 10, table 1; and 37-45. Many other types of products were examined, but not live animals. Commission Report at 9-36. And, as with Congress, the Commission Report considered the role of the **"manufacturer"** in producing or distributing products subject to the Commission's jurisdiction.

For all of the above reasons, the Office of the General Counsel concludes that Congress did not intend pets or other living animals, as such, to be **\*\*consumer products\*\*** under the CPSA. Please be advised that, although the opinions expressed in this letter are based on the most current interpretation of the law by this office, they could subsequently be changed or superseded by the Commission.

I hope that this letter has **been** responsive to your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read 'Susan E. Birenbaum', with a large, sweeping flourish extending to the left.

Susan E. Birenbaum  
Acting General Counsel

March 15, 1990

United States Consumer Product Safety Commission  
Washington, D.C. 20207

Attn: Susan E. Birenbaum, Acting General Counsel

Re: Our clients: **Randy** and Sharon Carpenter  
Date of Accident: September 23, 1988

Dear Ms. Birenbaum:

This office represents Randy and Sharon Carpenter, parents of Nathan Carpenter, deceased minor, as a result of an incident that occurred involving a wolf-hybrid dog.

In our research on the Consumer Product Safety Act, we found under the miscellaneous products **headnote** of the annotation of § 2052 of 15 U.S.C. the following:

"**Pet** turtles are consumer products and subject to regulation by Consumer Products Safety Commission under the Consumer Product Safety **Act**", C.P.S.C. Advisory Opinion # 78 (January 29, 1974).

We are interested in finding out whether any other animals are also considered a consumer product.

On March 13, 1990, we talked with Bob Poth, Director of the Division of Regulatory Management, who indicated that this Advisory Opinion is no longer applicable and that the C.P.S.C. does not have jurisdiction over any pets any longer. Mr. Poth suggested that we write to **you** for further clarification especially regarding the regulations expanding on the notification provisions.

Any assistance that you could give would be appreciated.

Sincerely,



BERNIE REAMER  
Legal Assistant

BR/mws

cc: Mr. & Mrs. Carpenter  
David A. Simpson, Esq.

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RECEIVED  
CPSC  
GENERAL COUNSEL OFFICE