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29 JAN 1974

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Commissioner Pittle (S) (S)

Beatrice Pitkin, Office of the General Counsel THRU: Michael A. Brown General Counsel

Pet turtles

This is in reply to your request of January 18th that this Office advise whether the Commission has legal jurisdiction over pet turtles. A review of the legislative history of the Consumer Product Safety Act and other appropriate legal literature reveals no hint that the Commission is precluded from exercising jurisdiction over pet turtles or other non-food animals. Therefore, we assume that the Commission may regulate the interstate sale of pet turtles as consumer products.

Section 3(a)(1) of the Act defines a consumer product negatively, by specifying what a consumer product is not. The Act merely states that, beyond the specified exceptions, "The term consumer product means any article..." The legislative history of the Act is silent as to a special Congressional meaning of the word "article"; so that unless it is concluded that "article" must refer to an inanimate object, it cannot be said that there was an intent to exclude live pets which meet the other elements of the definition of consumer product — that is, an article produced or distributed for sale to a consumer, or an article for personal use or enjoyment of a consumer.

Other definitions of "article" were examined. Webster's Third New International Dictionary, Unabridged, (1966) defines "article" as,

> "[1] one of a class of material things
> [2] piece of goods
> [3] a thing of a particular class or kind..."

Black's Law Dictionary, Rev. 4th Ed. (1968) defines "article" as,

> "[1] a particular object or substance, a material thing...
> [2] material or tangible object
> [3] 'Thing' of value..."

Without undertaking a theological discussion of material things or tangible objects, the foregoing definitions do not appear to exclude animate objects. A further search for an applicable definition of "article" (in the legal encyclopedia Words and Phrases (W&P)), led to definitions of "goods", "personal property", and "chattels", which were inconclusive as to the

status of pet animals. "The term 'goods or articles' includes a horse", is a statement found at 4 W&P 490 (1969). At 18A W&P (1956) and that volume's 1973 Supplement (p.32), the term "goods" is defined as inanimate in four cases and as animate in three -- although it appears that animals which are referred to as goods or chattels are usually livestock or beasts of burden.

Livestock are, of course, exempt from the Act as food. Beasts of burden may be exempt because they are not customarily produced or distributed for sale to, or enjoyment of consumers. Pet animals, however, were not referred to in the literature examined; thus it does not appear that the status of a pet animal as an article has been determined in the precedents.

It would appear that a pet turtle has cleared the initial hurdle of classification as an article. Such turtles are more frequently raised in ponds on turtle farms rather than caught in the wild or they are imported. Thus, they are customarily produced or distributed for sale, or for personal use or enjoyment. They are not products excluded from section 3(a)(1); therefore, the Act permits pet turtles to be termed consumer products.

The exceptions of section 3(a)(1) list specific articles which may not be called consumer products. Section 31 on the other hand, states that certain articles which are consumer products may nonetheless not be regulated by the Commission. Where the risk of injury associated with consumer products may be sufficiently reduced under other laws, the Commission may not exercise jurisdiction, although there is an implication that such jurisdiction might be reasserted if the Commission believes its remedial powers are necessary to reduce such unreasonable risks "...to a sufficient extent...".

The section 31 limitations to the Commission's jurisdiction cover products which have been regulated under the Occupational Safety and Health Act, the Atomic Energy Act, the Clean Air Act, and radiation hazards associated with electronic products which are regulated under the Public Health Service Act at 42 U.S.C. 263b et seq. Section 31, where Congress clearly delineated the limits of the Commission's jurisdiction in terms of pre-existing laws, would have been the logical place to also limit its jurisdiction over pets. If Congress had desired, it could have limited Commission jurisdiction by using another portion of the Public Health Service Act found at 42 U.S.C. 264 et seq., under which regulations to control communicable diseases are promulgated by the Department of Health, Education and Welfare (HEW).

This portion of the Public Health Service Act was the basis for HEW regulations controlling the sale of certain pet turtles in order to reduce the incidence of turtle-related diseases like salmonellosis. Among other things these regulations, published at 37 FR 24670, Nov. 18, 1972, prohibit the importation of pet turtles and provide for bacteriological testing of turtles in interstate commerce.

Although the jurisdiction of HEW over diseased pet turtles is not at issue, the jurisdiction of HEW's Food and Drug Administraton (FDA) over pet turtles has been denied by FDA in the past. In response to a query from Consumers Union, an FDA official stated in a letter of January 29, 1971 that, "Turtles and other pets do not fall under the purview of the Federal Food, Drug and Cosmetic Act."

Analysis indicates that the commission has jurisdiction over pet turtles; jurisdiction of the Commission over diseased pet turtles, concurrent with HEW, arises out of section 2(b) of the Act which states that one of the Act's purposes is to promote research and investigation into the causes and prevention of product-related illnesses (like salmonellosis), as well as product-related deaths and injuries.

Accordingly, since it does not appear that the Act, either by definition, exception, limitation, or inference, addresses the matter of excluding animate consumer products, it is our conclusion that pet turtles are consumer products and subject to regulation by the Commission.

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