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CPSA Sec. 3(a)(1)

Subject

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5/19/83
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FILE



(Power Lawn Mowers)

Michaels Machine
E-211157

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, O. C. 20207

January- 3, 1983

300

OFFICE OF THE
GENERAL COUNSEL

Mr. Robert L. **Michaels**
Vice President
Michaels Machine Company
709 N. 19th Street
Mattoon, Illinois 61938

Dear Mr. Michaels:

This letter is in response to your letter of November 12, 1982, concerning **whether** your "weed and brush" mower is a consumer product lawn mower that is subject to the Safety Standard for Walk-Behind Power Lawn Mowers. In our earlier correspondence with you, we had indicated **that** we did not have enough information to determine whether the mower **was** a **consumer** product.

Your Latest letter does not add any information concerning the past use and distribution patterns of **your** products. However, your letter does contain information concerning a label and a letter to your dealers which you suggest could ensure that these mowers are not used by consumers more than occasionally.

We agree that these additional steps would have the effect of reducing the purchase of these mowers by **consumers**. However, we feel that the letter to your dealers should be more emphatic about the importance of their not selling these machines to consumers for use as lawn mowers; merely pointing out the label to the customer may not be sufficient. We believe that for **maximum** effectiveness, the letter should explicitly state that the dealer is not to sell the mower to persons who want to use it for **mowing** their own residential lawns and that their dealerships would be terminated if they did **sell** the mower to such persons.

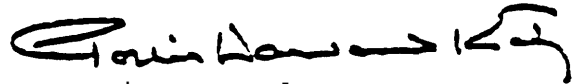
If this step were taken, and in view of the fact that the configuration of your mower is such that it probably would not have a wide appeal to consumers, it seems unlikely that these mowers would be purchased or used more than occasionally by consumers. **If** this result is achieved, we would not consider the mowers to be consumer products.

ADVISORY OPINION

I should stress, however, that this opinion is based on our interpretation of the information available at this **time**, and that if data became available **showing** that different use or distribution patterns are actually occurring, our opinion could change. In **addition**, 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.

Please do not hesitate to contact me if you **have** further questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin Howard Katz". The signature is written in a cursive style with a prominent loop at the end.

Martin Howard **Katz**
General Counsel

CSC

MICHAELS MACHINE COMPANY

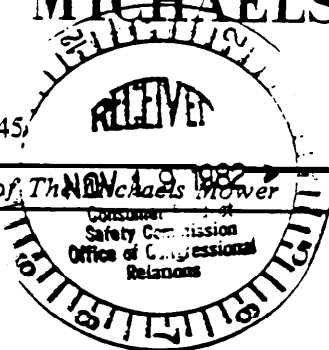
709 N. 19th Street
MATTOON, ILLINOIS
61938

Established 1945

Telephone (217) 234-7333

Manufacturer of The Michaels Mower

Builders of Special Equipment



Nov. 12, 1982

Mr. Edward D. Harrill
Director of Congressional Relations
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Dear Mr. Harrill:

Hr. Dan Crane has forwarded your letter of Oct. 29, 1982 to us for our comments. In your second paragraph you mention two criteria that would make our machine not subject to the standard.

- (1) It is not intended to cut grass and is not a "lawn mower". Our machine meets this criteria in that it is a weed and brush mower with tree sawing capability. It is not intended to cut grass, but is used to cut grass only where the grass has overgrown and cannot be cut with a normal lawn mower. This would be the case of an abandoned property, where the grass has overgrown, an example of this would be grass that has grown knee high.
- (2) It is not a "consumer product" as defined in 15 U.S.C. 2052 (a), (1) and thus is not subject to the standard. We have already submitted all the Information requested by Mr. Katz, that proves that our mower is not a consumer product as defined. There does not appear to be any possible way to prove that weed mowers are not used more than occasionally by consumers. Even if we had a hundred or a thousand of our customers write to you explaining that they do not use their weed mower to mow their lawns, except occasionally when the grass has overgrown, this would still not prove or disprove this point. The word occasionally is ambiguous and subject to personal opinion.

Your suggestion that a labeling procedure in conjunction with a letter to dealers might be established, is perhaps the most helpful solution to this problem. I have drawn up on the following pages an example of our proposed label to be applied to each new mower, and letter to be sent to all our dealers explaining their part and responsibility to see to it that the mowers are not sold to consumers for lawn mowing use. I submit these examples for your review and suggestions.

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If there is any omissions or changes that you feel would improve these examples we would appreciate the help.

We feel that the above steps would insure that our weed mowers would not be used by consumers more than occasionally. If the above changes in our operation meet with the commissions approval, we would appreciate a letter exempting us from the lawn mower regulations. We need this letter to show that we are not producing a product in violation of Federal Regulations.

We hope that this matter can be resolved soon so that we can start scheduling our purchasing requirements for our 1983 production year. As an example, engines usually require a six months lead time for scheduling purposes.

I want to thank you for the helpful letter to Mr. Crane.

Yours very truly,



Robert L. Michaels
Vice President

BLM

cc. Dan Crane, MC

The following is an example of the new label to be attached to each new mower sold.

* * * WARNING * * *

This mower is a weed and brush cutter. It is not to be used by consumers as a power lawn mower, and does not comply with the Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. Part 1205 Established by the U.S. Consumer Product Safety Commission.

The following is an example of the new letter to be sent to each dealer and distributors of Michaels Mowers.

Dear Dealer:

As you know we did not produce weed mowers in 1982 due to our seeking an exemption from the new power lawn mower regulations established by the U.S. Consumer Product Safety Commission.

We are happy to report that this question has been resolved and we are able to resume our weed mower production for the 1983 year.

In order to insure in the future that our weed mowers will not be sold to consumers for lawn mower use, a warning label with the following information will be attached to each new mower.

• • • • * * *

This mower is a weed and brush cutter. It is not to be used by consumers as a power lawn mower, and does not comply with the Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.B. Part 1205 Established by the U.S. Consumer Product Safety Commission.

As our dealer you must agree to point out the above label to each customer, in order to insure that the mowers will not be sold to consumers for lawn mowing use. Any dealers who fail to comply with this request will be terminated as dealers.

We have appreciated your business and support in the past and look forward to continued support in the future,

Yours very truly,

Robert L. Michaels
Vice President

RLM

Page 4

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The Honorable Daniel B. Crane
221 E Main Street
Olney, Illinois 62450

Dear Representative Crane:

Thank you for your letter of September 13, 1982, on behalf of the Michaels Machine Company ("Michaels"), which has asked our Office of the General Counsel for a determination that a particular power mower is not subject to the Safety Standard for Walk-behind Power Lawn Mowers, 16 C.F.R. Part 1205. The General Counsel had previously advised "Michaels" that he did not have enough information to determine whether the mower is a "consumer product" subject to the standard.

The only ways our General Counsel would be able to determine that this mower presently is not subject to the standard would be if we could find that the mower either (1) is not intended to cut grass and is thus not a "lawn mower" or (2) is not a "consumer product" as defined in 15 U.S.C. §2052(a)(1) and thus is not subject to the standard. In view of the legislative history of §2052(a)(1), we believe that before we could make the latter determination, we would have to have facts affirmatively establishing that the mower is not used more than occasionally by consumers. However, as we have advised the company, although the information they have submitted would suggest that the mower might not generally appeal to consumers who wished only to mow a typical residential lawn, the available information does not establish that the mower is not used more than occasionally by consumers.

In order to help assure that their products are not used by consumers more than occasionally, some other companies have established practices to prevent consumers from using the products. For example, the following techniques have been used.

1. The company could establish a policy of informing its dealers or distributors that the product is not to be sold for consumer use. At least one company has a policy of terminating any distributor who failed to insure that sales are not made to consumers.

2. The mower can have a decal indicating that it is not intended for consumer use and does not comply with the mandatory safety standard applicable to consumer mowers.

Perhaps the Michaels Machine Company could consider whether such techniques would inhibit the consumer use of such mowers to the point that it is only occasional.

Our staff notes that in "Michaels'" May 12, 1982, letter, they inaccurately conclude that the standard requires that a mower "blade be completely enclosed on all sides, including the front part" and that this requirement makes the mower unsuitable for use in weeds and brush. However, the standard only requires that the rear 120° of the mower be enclosed, unless the manufacturer chooses to comply with the blade stopping requirement of the standard by stopping the engine and also provides a manual restart mechanism that is more than 24 inches from the top of the mower's handle. (See ss1205.4(b)(1)) and 1205.5(a)(1) of the standard, a copy of which is enclosed for your information.)

I hope the above information is helpful to the company. Our Office of the General Counsel will be happy to give further determination concerning the status of this mower under the standard if additional data relevant to the use and distribution patterns are provided. The Office of the General Counsel can be reached at 301/492-6980 if "Michaels" would like further information that could help resolve this question.

Sincerely,

Edward D. Harrill
Director of Congressional Relations

Enclosure

bcc: CR/EX/Spec. Assts.
DLM:ter:veb:10-29082

CPSA Sec. 3(a)(1)
(Power lawn Mowers)

*Michael
Machine*

FILE



U. S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, O. C. 20207

AUG 24 1982

OFFICE OF THE
GENERAL COUNSEL

Mr. Robert L. Michaels
Vice President
Michaels Machine Company
709 N. 19th Street
Mattoon, Illinois 61938

Dear Mr. Michaels:

This is in response to your letter of July 8, 1982, in which you request a determination of whether the 26-inch power mower made by Michaels Machine Company is a consumer product and thus subject to the Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. Part 1205. Based on the available information, we are unable to determine whether this mower is a consumer product.

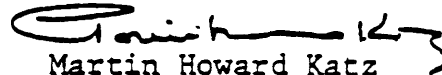
The information that you have submitted would suggest that this mower generally would not appeal to consumers who wished only to mow a typical residential lawn. However, we are unable to conclude that this mower would not be used "more than occasionally" by consumers, which, as we explained in our letter of July 24, 1982, is one jurisdictional criterion for a consumer product.

The major area of uncertainty in this regard involves the extent to which farm implement dealers may sell this mower for consumer use. Since these dealers account for 42 percent of your production, it is possible that they could sell more than occasionally to consumers. Also, your letter does not explain how it was determined that the sales included in the "direct to farmer" category were actually made to farmers for commercial rather than consumer use.

Mr. Robert L. Michaels
Page 2

The manufacturer of a product should be in the best position to determine the use and distribution patterns of that product. We recommend that manufacturers consider their products to be consumer products unless the available information clearly establishes that this is not the case. However, if you can, provide additional information on the use and distribution patterns for this mower, we may be able to give you an opinion on whether it is a consumer product.

Sincerely,


Martin Howard Katz
General Counsel

MICHAELS MACHINE COMPANY

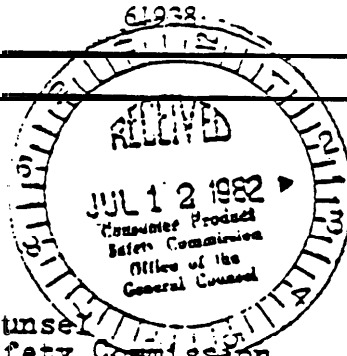
709 N. 19th Street
MATTOON, ILLINOIS

Established 1945

Telephone (217) 234-7333

Manufacturer of The Michaels Mower

Builders of Special Equipment



Mr. Martin Howard Katz
Off ice of the General Counsel
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

July 8 , 1982

Dear Mr. Katz:

Thank you very m u c h for your letter of June 24, 1982. Your letter is very helpful in explaining the definition of the tent "consumer product" as covered by 15 U.S.C., Sec. 3, 2052 (a) (1).

You have requested that we supply additional information in order that you may arrive at an advisory opinion. We have searched thru our records and are able to supply the following information that we feel will be helpful.

1. The following is a list of all the publications we have advertised in from 1972 to the present.
(Please s e e attachment A)
2. The mower is not normally used for lawn mowing for the following reasons -
 - a. The cost of the mower is \$650 while the cost of a lawn mower would be less than \$350.
 - b. The cutting width of the mower is 26" while the cutting width of a normal lawn mower is up to 22 inches.
 - c. The engine is 8 horsepower, while the engine on a regular lawn mower is up to about 5 horsepower.
 - d. The weight of the mower is about 200 pounds and it cannot be easily pushed around unless running, it cannot be lifted by a single man.
 - e. The size of the mower from front to back is about 6 feet in length, and 29 inches in width, a rather large piece of equipment to be stored in a normal garage.
 - f. The cutter blades are located at a height of 2" from the ground. This is too high for doing a good job of mowing a lawn, and if the blades are lowered, they will scrape the ground in many cases.
 - g. The mower is usually used around a house or buildings only where the grass is overgrown, such a s would be the case of a vacant lot or an abandoned building.

Carl W. Blechschmidt, EX-P

August 2, 1982

THROUGH: Walter R. Hobby, AED, Economics

Gregory B. Rodgers, ECCP

Commercial Exemption to the Mower Standard for **the Michaels Machine Company**

This is in response! to your *request* for **comments** on the Michaels Machine Company letter of **July 8, 1982**. They requested that their 200 pound mower, with a 26 inch **cutting** width and 8 horsepower engine, (**the Michaels Mower**) be exempted from the mower standard.

This mower is produced in **small** quantities for commercial use. The manufacturer has **apparently** not **advertised** since 1977, probably **because** of the **mowers** small volume. When it did **advertise**, in and before 1977, its advertisements were carried in farm and trade **publications**.

The manufacturer **also** provided a **sales record** for 1979, which indicated that most of its **mowers** were sold directly to **farmers** and to farm **implement** deal-- It is impossible to **tell** from these categories how many mowers were sold for **consumer** use, but the number is probably negligible.

Given **the size, weight, price** and the **eight** horsepower engine, we find it **highly unlikely** that **this mower** would be purchased by consumers. Moreover, its **cutter blades** are **located** two inches above the ground, making the mower generally inappropriate for cutting lawns.

It is **our opinion** that this **mower** is not normally used by consumers and, therefore, should be exempted from **the** mower standard.

cc: Subject file
Chron file
Ewell, Hobby
Rodgers/es



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

23 JUL 1982

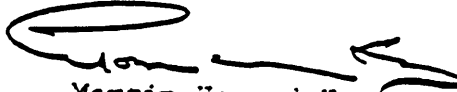
OFFICE OF THE
GENERAL COUNSEL

Mr. Robert L. Michaels
Vice President
Michaels Machine Company
709 N. 19th Street
Mattoon, Illinois 61938

Dear Mr. Michaels:

We have received your letter of July 8, 1982 containing additional information concerning your request for a determination of whether your model RL26 mower is a consumer product. Your materials have been forwarded to our technical staff for their evaluation. After their comments are received, we will write you concerning our determination.

Sincerely,


Martin Howard Katz
General Counsel

Portions
~~RESTRICTION REMOVED~~ Available
for public release.
Initial *pm* Date *11/17/82*

*6 (6)
2 (4)
pm*

UNITED STATES GOVERNMENT

U.S. CONSUMER PRODUCT
SAFETY COMMISSION

Memorandum

TO Carl Blechschmidt, OPM
Through: Stephen Lemberg, Assistant General Counsel

DATE 23 JUL 1932

FROM Harleigh Ewell, OGC *HE*

SUBJECT: Request from Michaels Machine Company for a Determination
that Certain Mowers Are Not Consumer Products

Attached are materials we have received from the Michaels Machine Company concerning the subject request. Would you please obtain any comments the staff may have on the extent to which consumers may purchase or use these mowers.

RECEIVED

JUL 27 1932
U.S. CONSUMER PRODUCT
SAFETY COMMISSION

3. Since 1975 the mower has been sold mainly by mail order, direct to the customers. Before that time they were handled by farm implement dealers in Illinois, Indiana, and Missouri.
(Please see attachment B, Survey of 1979 Sales)

We hope that the above information will be sufficient for you to determine if our mower is exempt from the "consumer product " classification, and therefore, exempt from the Safety Standard for Walk-Behind Power Lawn Mowers . If, however, additional information is required my father has kept very detailed records, and I should be able to supply it.

Yours very truly,



Robert L. Michaels
Vice President

cc: Daniel B. Crane, MC

Withheld

4 - 5



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

24 JUN 1982

OFFICE OF THE
GENERAL COUNSEL

Robert L. Michaels
Vice President
Michaels Machine Company
709 N. 19th Street
Mattoon, Illinois 61938

Dear Mr. Michaels:

Representative Daniel S. Crane has sent us a copy of your letter dated May 12, 1982, that was addressed to the General Counsel of the Consumer Product Safety Commission. I did not receive a copy of the original Letter. In your letter, you ask for an advisory opinion on whether your Model RL26 mower is a "consumer product" and thus subject to the Safety Standard for Walk-Behind Power Lawn Mowers 16 C.F.R. Part 1205. However, there is insufficient information in your letter to enable us to determine if this mower is a "consumer product."

The term consumer product is defined in 15 U.S.C. § 2052(a)(1), a copy of which is enclosed, and the term 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. 32-1153, 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 past determinations of this nature, information such as the following has been found to be relevant.

1. Whether the mower is advertised in consumer-oriented channels or whether promotional efforts are limited to special interest publications for commercial, industrial, and government users.

2. Whether some feature associated with the mower, such as cost, weight, or performance would discourage the use of the mower for residential purposes.


3. Whether the distributors of the mower also carry normal consumer mowers.

4. The results of warranty card surveys, or surveys of the product's distributors, indicate the degree to which the product is sold to, or used by, consumers.

We note that the promotional material enclosed with your letter indicates that some of the users do use the mower for mowing their yards. However, if you can supply us with specific information concerning the extent to which this mower may be sold to or used by consumers, we may be able to give you an opinion concerning the status of this mower as a consumer product.

We should mention, however, that any such determination would be likely to be based primarily on the information supplied by you, and if data showing different use or distribution patterns became available, our determination could change.

Sincerely,


Martin Howard Katz
General Counsel

Enclosure

1

DANIEL B. CRANE
12th DISTRICT
ILLINOIS

WASHINGTON OFFICE
ROOM 113
CAPitol PRESS OFFICE BUILDING
12-123-1133

EMPLOYEES
POST OFFICE AND CIVIL SERVICE
SMALL BUSINESS

Congress of the United States
House of Representatives
Washington, D.C. 20515

CRC

CENTROFFICE SERVICES CENTER
NORTH
125 NORTH GALETT STREET
DARVESS, ILLINOIS 61722
(312) 266-7143

CENTRAL SOUTH
111 E. MAIN STREET
DARVESS, ILLINOIS 61722
(312) 215-2171

May 14, 1982

Office of the General Council
Consumer Product Safety Commission
Washington, D.C. 20207

Dear Sir,

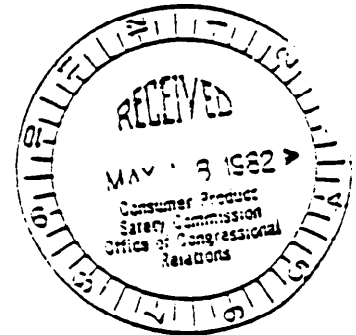
Attached is a letter from a constituent regarding an exemption on a mower manufactured by this company.

It would be appreciated if this matter could be expedited as they have suspended production until they receive a clarification from your commission.

Sincerely,

Dan Crane
Daniel B. Crane, M.C.
221 East Main Street
Olney, IL 62450

DBC:pg



MICHAELS MACHINE COMPANY

709 N. 19th Street
MATTOON, ILLINOIS
61938

Established 1945

Telephone (217) 234-7333

Manufacturer of The Michaels Mower

Builders of Special Equipment

Office of the General Council
Consumer Product Safety Commission
Washington, D.C. 20207

May 12, 1982

Gentlemen:

We manufacture a weed and brush mower. Our mower is also capable of sawing down trees up to 8" in diameter. Our mowers are used on farms, nurseries and commercial applications. We have never been sued for personal injury resulting from the use of one of our mowers.

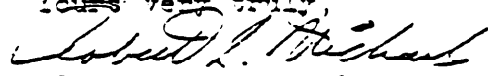
Recently we received information that our mower might be covered under the new Consumer Product Safety Commission rules known as "The Safety Standard for Walk-Behind Power Lawn Mowers". Our mower cannot be made to comply with these regulations and still be useable as a weed and brush mower. For instance the requirement that the blade be completely enclosed on all sides, including the front part, would make it impossible to push the mower into heavy weeds and brush. The 30" cut exemption to some of these requirements does not help because many of the mowers are used in nurseries for mowing between narrow rows of plants, less than 30" wide.

After studying a copy of the regulations (Title 16, Chapter 11, Part 1205, Subpart 14) it is our belief that it is not the intent of these regulations to cover weed and brush cutting equipment. We do not manufacture a lawn mower.

In 1952 the question arose as to whether our mower was to be classified as a lawn mower. This was in relation to the manufacturers excise tax on lawn mowers at that time. I have enclosed a copy of the letter from the Commissioner of the Internal Revenue Service in which the Michaels Mower was allowed an exemption from this tax. This exemption was based on our mower not being classified as a lawn mower.

We respectfully request that the Council give us an advisory opinion as to the present classification of our mower and if it can be exempted from the power lawn mower regulations. We have currently stopped production in order to clarify our position.

Yours very truly,


Robert L. Michaels
Vice President

9



TREASURY DEPARTMENT

WASHINGTON 25

DEC 2 1952

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

ADDRESSES REPLY TO
COMMISSIONER OF INTERNAL REVENUE
AND REFER TO

T:R:Exc
DEN

Mr. Tom E. Grace, Attorney
118 South 17th Street
Mattoon, Illinois

Dear Mr. Grace:

Reference is made to your letter of March 18, 1952, referring to Bureau letter addressed to you under date of February 29, 1952, relative to the application of the manufacturers' excise tax imposed by section 3406(a)(3) of the Internal Revenue Code, as amended by section 485 of the Revenue Act of 1951, to the Michaels Mower manufactured and marketed by your client, Mr. Gilbert J. Michaels, Mattoon, Illinois.

It is contended that the mower in question should not be classified as a power lawn mower of the household type and thus not subject to the tax. In support of this contention it is stated that the mower is more ruggedly constructed than is the usual power mower intended for use on the lawn surrounding the average home, that it has a 3 h.p. engine and large 26" wheels. It is further contended that the mower is primarily intended for use in cutting weeds, for use in cutting hedge rows, in felling small trees and other agricultural uses and is only incidentally held out for use in mowing a lawn. With respect to this latter point it is stated that the mower should not be considered as being of practical use as a lawn mower since it has a minimum cutting height of from $\frac{1}{2}$ to 2 inches, whereas the normal lawn mower has a minimum cutting height of $\frac{1}{4}$ inch.

It is also noted that the selling price of the Michaels Mower is considerably higher than a regular power lawn mower and that 95 percent of the manufacturer's sales are made to farmers for the purpose of weed mowing.

Further consideration has been given to the question as to the taxability of the Michaels Mower in the light of the additional

2 - Mr. Tom E. Grace, Attorney

information furnished and it is held that the Michaels Mower is not a power lawn mower of the household type within the meaning of section 3406(a)(3) of the Code, as amended, and, therefore, no tax is applicable to sales of such mower by the manufacturer. Accordingly, the ruling furnished you in Bureau letter of February 29, 1952, is reversed.

Very truly yours,

Norman A. Sugarman, Assistant Commissioner

By

H T Swartz
Head, Technical Ruling Division