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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, O. C. 20207

October 24, 1986

OFFICE OF THE
GENERAL COUNSEL

CPSA 6 (b)(1) Cleared

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10/29/86

No Mfrs/PrvtLblrs or
Products Identified

____ Excepted by _____
-Firms Notified, _____

Comments Processed.

Frederick S. Grahn, Esq.
Grahn & Grahn, Ltd.
Suite 1204
134 North La Salle
Chicago, Illinois 60602

Dear Mr. Grahn:

This is in response to your letter of October 15, 1986, in which you ask for an advisory opinion concerning whether a hypothetical firm would have any liability under either the Federal Hazardous Substances Act ("FHSA") or the Poison Prevention Packaging Act ("PPPA") because of a heavy-duty oven cleaner sold to "restaurants, landlords and janitorial services."

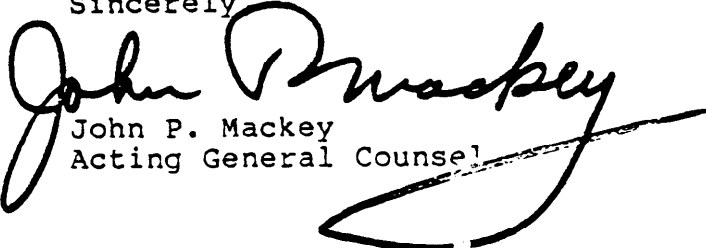
In order to be regulated under the FHSA, a "hazardous substance" must be "intended, or packaged in a form suitable, for use in the household or by children. See 15 U.S.C. § 1261(f), (p), (q)(1). While use by the employees for landlords and janitorial services could involve use of the oven cleaner in the homes of consumers, the Commission's regulations, at 16 C.F.R., § 1500.3(c)(10)(i), state that the term "[h]azardous substance, intended, or packaged in a form suitable, for use in the household . . . does not include industrial supplies that might be taken in to a home by a serviceman. . . . [a]n article labeled as, and marketed solely for, industrial use does not become subject to [the FHS^A] because of the possibility that an industrial worker may take^a supply for his own use." A copy of § 1500.3(c)(10)(i) is en-
closed for your information.

ADVISORY OPINION

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Page 3

I hope this letter is helpful. Please do not hesitate to contact me if you have further questions.

Sincerely


John P. Mackey
Acting General Counsel

Enclosure

GRAHN & GRAHN, LTD.

FREDERICK S. GRAHN
CATHERINE L. GRAHN

October 14, 1986

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Office of the General Counsel
U. S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: Kathryn A. Becker File

Dear Sir/Madam:

I am writing to request an advisory opinion based on the following hypothetical fact patterns:

1. ABC Corporation manufactures a heavy duty oven cleaner. The oven cleaner contains 10% Sodium Hydroxide. ABC Corp. sells and distributes the oven cleaner to restaurants, landlords and janitorial services. The oven cleaner is marked "for institutional use only" and sold in cases of four one-gallon bottles. It is not sold to individuals and the gallon jugs do not have a child-proof cap. In fact, its dispenser is stopped only by an easily removed funnel.
2. ABC sold its oven cleaner to XYZ Restaurant. An employee of XYZ took one gallon of the oven cleaner to his residence. A 20 month old child whom the employee was baby-sitting ingested some of the cleaner and received severe esophago-trachial burns. Does any liability attach to ABC Corporation under the Federal Hazardous Substance Act and/or the Poison Prevention Packaging Act?
3. The facts are the same as above, but ABC also sells and distributes the oven cleaner to a public school's maintenance department. How, if at all, will this change ABC's liability under the FHSA and/or PPPA?

Thanks in advance for your assistance in this matter.

Very truly yours,

GRAHN & GRAHN, LTD.

Frederick S. Grahn
Frederick S. Grahn

FSG:ha

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Page 2

The theoretical facts that you describe indicate that the oven cleaner is never sold or distributed for other than commercial purposes. Thus, under the principles described in the preceding paragraph, the oven cleaner would not be subject to the FHSA by virtue of its use **by** landlords, restaurants, or janitorial services. The addition of the fact of sale for use by a public school's maintenance department would not **bring** the product within the scope of the FHSA, since that use is not one involving use in the household or by children.

The PPPA applies only to "substance[s] which [are, among other things,] customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household." 15 U.S.C. § 1471(2). The fact that the PPPA applies only to acts performed "by individual's" indicates that the Act is not intended to apply to substances that are present in the home **only** when being used by the employees of landlords or janitorial services. Since use by a school's maintenance department is not "in or about the household," that additional fact would not bring the product within the scope of the PPPA.

Therefore, under the facts hypothesized in your letter, we would conclude that **this** oven cleaner is not subject to the requirements of either the FHSA or the PPPA. In making this determination, we consider it significant that the product would never be available in a retail store.

I should note, however, that if claims such as that the oven cleaner kills germs or sanitizes are made in connection with the distribution of the product, the product would be considered a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act ("**FIFRA**"), which is administered by the U. S. Environmental Protection Agency. 7 U.S.C. § 136. There may be labeling or child-resistant packaging requirements applicable to the product under FIFRA.

The views expressed in this letter are based on the most current interpretation of the law by this office. However, they could be changed or superseded subsequently by the Commission. In addition, in appropriate circumstances, the judicial system would be the ultimate interpreter of the law in this area.