

MFR, PRVLBR NOTIFIED

- No comments made
- Comments attached
- Excisions/Revisions
- Firm has not requested further notice

Lab 8/8/84



ADVISORY OPINION # 291

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D. C. 20207

October 14, 1983

OFFICE OF THE
GENERAL COUNSEL

Mr. J.H. Brister
Brister Thunder Carts, Inc.
P.O. Box 324
Roseland, Louisiana 70456

Dear Mr. Brister:

This letter is in response to your request that came out of the telephone conversation we had the other day. Your initial inquiry concerned what steps you could take to ensure that the lawn mowers manufactured by your firm, which you consider to be commercial mowers, would not be subject to the requirements of the Commission's Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. Part 1205 (copy enclosed). You indicated that the mowers did not meet all of the exclusionary criteria set forth in § 1205.1(c) of the standard, but you mentioned other makes of "commercial" mowers that you thought had been exempted from the standard.

In our conversation, I noted that the Commission had not "exempted" any mowers from the standard but that the Office of the General Counsel had indicated to some firms that, based on the available information, their mowers did not appear to be "consumer products." The significance of this determination is that only those mowers that are "consumer products," as that term is defined in section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. § 2052(a)(1)), are required to comply with the standard.

Under 15 U.S.C. § 2052(a)(1), the term "consumer product" 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. 92-1153, 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.

Mr. J.H. Brister - Page 2

As I indicated in our phone conversation, the bottom **line** test of whether a mower is a consumer product relates to the extent to which consumers use the product. Therefore, we are not able to give you a list of things that can be done to ensure that your product will not be considered a consumer product. We believe that a product's manufacturer usually would be in the best position to assess the use and distribution patterns of the product and that if **it** is not clear that the product will not be used more than occasionally by consumers, the product should be considered to be a consumer product.

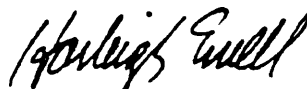
After I explained the above matters, you asked if we could recommend language for a label intended to discourage consumer use of a mower. We have considered this question in the past and believe that the following label could be helpful in that regard:

THIS MOWER IS INTENDED FOR COMMERCIAL USE ONLY AND
DGES NOT COMPLY WITH THE MANDATORY SAFETY STANDARD
APPLICABLE TO CONSUMER MOVERS.

However, as I indicated above, we cannot conclude from the information you have provided that merely providing this label would be sufficient to ensure that consumers would not use the mower more than occasionally. Therefore, it is possible that your mower would be subject to the standard even if the label noted above is used.

I hope this information is helpful. Please contact me if you have any **further** questions.

Sincerely,


Harleigh Ewell
Attorney

Enclosure

OGC chron
file'
reading

✓ HEWELL:ark 10/14/83