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CFSA Sec. 3(a)(1)

(power lawn mower)



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U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, O. C. 20207

February 22, 1983

OFFICE OF THE
GENERAL COUNSEL

Mr. James L. Shook
Executive Vice President
Brave Industries, Inc.
115 East Front Street
Annawan, Illinois 61234

Dear Mr. Shook:

This letter is in response to your letter of January 18, 1983, in which you inquire about whether your proposed 26 inch "weed mower" is subject to the Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. Part 1205. The remainder of this letter discusses the factors relevant to this determination.

Since your proposed mower does not meet the express exclusionary criteria in § 1205.1(c) of the standard, whether it would be subject to the standard would depend on whether it is both a lawn mower and a "consumer product;" which in turn depends on whether it is used more than occasionally by consumers to cut grass. The term "consumer product" is defined in 15 U.S.C. § 2052(a)(1), and 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. 1153, 92 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.

The best data on which to base such a determination would be actual data concerning the use and distribution patterns for the product sufficient to clearly show that the product is not sold to, or used by, consumers more than occasionally. Such data can be difficult to obtain, and in your case (where the mower has not been previously marketed), we assume that such data are unavailable. Although sales or rentals for use around farm fields would not be considered consumer uses, the extent to which consumers might patronize

ADVISORY OPINION

farm merchandising stores or rental agencies to obtain these mowers for consumer use is not clear. However, the fact that a product is not sold through outlets that normally cater to consumers can be one factor that, combined with others, can form the basis for a prediction that a product will probably not be sold more than occasionally to consumers.

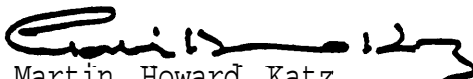
Some manufacturers have been able to indicate to us that they can control the distribution of their product so that all sales will be for commercial or governmental use. In these cases, we are able to advise the manufacturers that if that goal is achieved, we would not consider the product to be a consumer product. Other manufacturers, while not indicating they could exert this degree of control, have indicated that they have advised their dealers that it is against company policy to sell to consumers and that anyone found violating that policy would be terminated as a dealer. These latter manufacturers also indicated that they would label their commercial mowers to indicate that they were for commercial use only and did not comply with the mandatory safety standard applicable to consumer mowers.

Another relevant factor would be whether there are any physical features of the mower that would make it unsuitable for consumer use.

I should also point out that our opinions on whether particular products are consumer products are generally based on the information supplied by the requesting party, and if information showing different use and distribution patterns became available, our determination could change. We view these opinions as an interpretation of the definition of consumer product based on a particular set of facts and not as an authorization to produce a particular model that does not comply with the standard.

I hope the above discussion clarifies our view on the meaning of the term "consumer product." Please do not hesitate to contact me if you have any questions or can supply any further information that could aid in determining whether your proposed weed mower is a consumer product.

Sincerely,



Martin Howard Katz
General Counsel

Brave Industries, Inc.
115 East Front Street
Annawan, Illinois 81234
309 / 935-8809

Quality Equipment
Manufacturers

January 18, 1983

Consumer Products Safety Commission
General Council
Washington, D.C. 20207

Dear Sir:

We are developing a high wheel weed mower and we are naturally concerned about any regulations pertaining to walk behind weed mowers. This weed mower will have a 8 H.P. engine, 26 inch rotary blade, and will weigh approximately 150 lbs.

About 95% of these weed mowers will be sold to farm merchandising stores that cater to the farmer and about 5% will be sold to rental agencies. This weed mower is designed to cut weeds around farm fields and is not designed to mow lawns. Our promotional effort will be through advertising in farm magazines and participating in trade shows. Our suggest retail price will be under \$600.00.

We would appreciate any assistance you can give us through advising us if a weed mower of this type falls under the new guidelines for consumer lawn mowers.

Thank you in advance for your assistance.

Sincerely,

BRAVE INDUSTRIES, INC.

James L. Shook

JAMES L. SHOOK
Exec. Vice Pres.

JLS:vm

