

Glaser

# Consumer protection with teeth

A year old and fully staffed, the U.S. Consumer Product Safety Commission has become a watchdog with a bite

Mennie

not relevant

Take a 35-year-old assistant professor of electrical engineering, add intense personal interest in consumer protection, and then supply him funding through the National Science Foundation for research on effective methods, materials, and media for upgrading consumers' technical sophistication.

Next create a powerful Government agency concerned with product safety and sorely in need of experienced commissioners to handle uncharted responsibilities and sensitive situations. Finally, heat everything in a broth of corporate unrest concerning private product-related litigation that has increased dramatically over the last decade.

Such experience, needs, and pressures are very real, and they combined to make R. David Pittle the fifth of five commissioners on the Consumer Product Safety Commission (CPSC) October 10, 1973. His consumer-oriented commitments before nomination included not only the NSF-funded research at Pittsburgh's Carnegie-Mellon University, but also the presidency of a local volunteer group, the Alliance for Consumer Protection. Aware of the Alliance and the activist role played by Dr. Pittle, Ralph Nader recently described him as "the only engineer in the U.S. who 'picketed' for the consumer."

Returning to Newark College of Engineering for the fifth annual Product Liability Prevention Conference—this time as keynote speaker—Commissioner Pittle was careful to mention tasks unfinished and roads not (yet) taken, but it was obvious that the CPSC has come a long way in its first 15 months of operation.

A founding enterprise last summer, not yet fully staffed or organized, the CPSC is now an effective Government agency, which can ask for—and get—prime television time to bring hazardous products to the public's attention. Through the same medium, the Commission is also promoting a toll-free telephone "hot

line" (800-638-2666) for consumers wishing to report product-related problems or suspected dangers.

Calls are taken by special operators during normal business hours. When they are off duty, a taping system records all incoming messages.

## I. A product banned

The full weight of the Commission came down recently on one item indigenous to nearly every auto repair shop and the garages of many weekend mechanics: a rubberized, plastic-sheathed trouble light (with extension cord) that can be hung from hood or chassis to illuminate dingy work spaces.

A soft plastic forms the barrier between bare hands and bare metal, but this insulation can be easily pushed aside, leaving live portions of the underlying receptacle exposed. Compounding the hazard is a lack of brand information on the offending light.

The manufacturer was finally identified as A.K. Electric, Brooklyn, N.Y., and a nationwide alert was issued over television and radio at the end of August. An official court-sanctioned ban followed a few days later.

Another common appliance, color television, has also come under the Commission's watchful eye. Starting with a simple request, which generated little of the needed data, the CPSC has now subpoenaed all manufacturers making or selling color TVs in the U.S. for accident information relating to fire and shock hazards. The Commission is expected to make its full intentions in this area known through the Federal Register sometime this month, and will probably have selected a team to develop formal color TV standards by December.

Not all the actions thus far undertaken by the CPSC are so obviously beneficial, or even welcomed by the public the Commission is pledged to protect. Bicycles now outsell automobiles in the U.S., and on July 1, 1974, the CPSC announced mandatory

safety regulations for bicycles introduced into interstate commerce on or after January 1, 1975.

## II. The number one hazard

Although the CPSC has accumulated evidence placing the bicycle as number one on its product hazard index, many bicycle enthusiasts fear that the new standards will effectively ban light, ten-speed bikes or make them so costly that few could afford them. Commissioner Pittle, however, believes that the new rulings will stand as an example of the way Government safety standards substantially reduce injuries at minimal cost or inconvenience to industry and consumers. He claims a CPSC staff analysis shows that the standards will, at most, add only a few ounces and a few dollars to complying bikes while reducing injuries by tens of thousands. Of course, automobile seat belt interlocks, promoted and mandated by the National Highway Traffic Safety Administration, in much the same manner, are now about as popular with motorists as straitjackets are with mental patients.

Lightweight bikes are definitely providing transportation, recreation, and at least some immediate relief from the energy crisis for a growing army of devotees. Any regulation that even hints at turning the sleek racers into balloon-tired "newsboy specials" is probably in for some very rough going.

## III. Prevention vs. litigation

These examples of recent CPSC activities underline the Commission's orientation toward *prevention* of injury rather than compensation of the injured. Commissioner Pittle endorses the Commission's role in this respect and provides a carefully reasoned personal theory to explain why little faith has been attached to private product liability litigation for preventing consumer product accidents.

Addressing the conference, Com-

missioner Pittle explained that "product liability is a post-injury mechanism. It is not triggered until someone is injured, and in most cases will not serve a preventive function unless many persons have filed lawsuits." Delays attributed to this process were termed "understandable but intolerable." And Commissioner Pittle acknowledges that "in certain instances, manufacturers may find it less costly to pay damages than to produce safer products."

Another unwelcome characteristic of product liability litigation is its lopsided impact on industry. Since companies cannot predict the extent of product-related injury or the number of successful lawsuits, Commissioner Pittle expects that "they may well gamble by producing products that, although inexpensive, pose high degrees of hazard."

An emotion-filled courtroom is, of course, not the ideal platform for a reasoned and dispassionate analysis of the risks associated with a particular product. "Lawsuits will continue to be win-lose propositions," claims Commissioner Pittle, "dealing mainly with the interaction of one person with one product at one point in time. Parties to a lawsuit are concerned with the particular factual nuances of their case and not with the more general aspects of risk associated with the product at issue. There is no systematic follow-up to determine whether the defect which caused the plaintiff's (consumer's) injury has been corrected."

#### IV. Protection or paternalism?

But there are critics who see the CPSC as either a threat to the status quo, or a misguided (though perhaps well-intentioned) "mother hen" that will end up costing consumers dearly for any protection it may afford. Rudolph Janata, an attorney with Wright, Harlar, Morris and Arnold, remarked during a conference panel discussion that "our adversary-jury system of determining tort liability rests upon a principle that is basic to human nature and morally inescapable—that one who causes injury to another should fairly and adequately compensate him for that injury. This is a principle which carries built-in protections for plaintiff and defendant alike."

Seeking to counter "despair" and "a defeatist mentality" among defense lawyers and manufacturers, Mr. Janata's comments were not totally

unexpected. Far more illuminating were the remarks of conference speaker Margaret Dana, newspaper columnist and long-time consultant on consumer attitudes. She is keenly aware, from readership feedback, that consumers are particularly anxious about the cost of safe products and potential curtailment of acceptable options in the marketplace. Ms. Dana concludes, "Already there is some resentment toward the preemption of consumers' right to choose what level of performance they want, when any regulatory body issues a mandate before taking the time to find out how consumers feel about it."

#### V. Setting standards

Actually, if the CPSC functions as Commissioner Pittle describes it, the public has and should continue to have a very strong influence on any final list of product specifications. Since the Commission is generally prohibited from drafting safety standards by itself, it must publicly invite interested persons outside the Commission to develop a proposed consumer product safety standard.

Regulations require such "offerors" to indicate clearly how they will involve consumers in the development of a safety standard. Offerors must also demonstrate technical competence and a willingness to comply with the Commission's conditions for standards development.

Through various appeals, a pool of about 2000 volunteers has been identified by the Commission, thus providing offerors with a source of willing helpers who have no economic stake in influencing the final standards. These potential contributors are largely consultants, faculty, housewives, and members of public interest lawfirms. Some cash is available to help offset an offeror's costs should his proposal (offer) be accepted. But this apparent generosity has proved a real stickler.

Implementation of the offeror concept has not been totally successful thus far. Commissioner Pittle admitted that the first CPSC negotiations for an architectural glass standard broke down when joint offerors—the National Consumers League and the American Society for Testing and Materials—insisted on a provision guaranteeing funds for the salaries of technical consumer representatives who might spend substantial time away from their normal employment.

Technicalities have also been re-

sponsible for some recent unfavorable headlines about how the Commission "capitulated" to industry objections to a proposed 1974 ban on fireworks. Actually, Commissioner Pittle explains, "After publication of a regulation, persons adversely affected have 30 days to file objections. If objections are filed and raise sufficient matters of fact or law, a hearing *must* be set at which evidence can be presented and a decision reached." The fireworks ban has been postponed—presumably due to normal administrative procedures—but once these hearings are over the ban could still go into effect by next July 4.

But even assuming a flawless effort by the CPSC, manufacturers will still face gloomy and disappointed consumers as part of the normal business day. Some insight into this matter was provided by a specialist serving one of the United States' biggest retail operations: Sears Roebuck, Inc.

#### VI. A moving target

As quality assurance engineering department manager for Sears, Robert W. Peach proposed to a conference general session that at least some consumer gripes are traceable to rising expectations in a fast-moving marketplace. To illustrate, he asked his audience to consider the significance of a complaint against mechanical adding machines—that they are "noisy and slow"—at two points in time: five years ago, and today when they must compete with solid-state pocket calculators. Where once there may have been genuine concern for defects or lubrication problems, perhaps there remains only the frustrated recognition that something much better and cheaper is now available.

In another session dealing with appliance quality, Robert H. Meyerhans, vice president and director of corporate product safety and reliability for the Fedders Corporation, acknowledged that few consumers appreciate the meaning of reliability as it applies to a given appliance type. Although significant differences can exist between competing brands, top- and bottom-line models from the same manufacturer were credited with similar life expectancies. While the free-spending customer may gladly shell out for convenience features, he'll wind up with the same motors, bearings, belts, and relays as his more thrifty neighbor.

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