MAR 26 1973
SECRETARY

BEFORE THE FEDERAL TRADE COMMISSION

Albert J. Fritsch, A. Blakeman Early, and Center for Science in the Public Interest, a corporation,

Petitioners.

Docket No. _____

MAR 25 2 55 PM '73
OFFICE OF THE DIRECTOR BUREAU OF CONSUMER PROTECTION
FEDERAL TRADE COMMISSION RECEIVED

PETITION FOR ADMINISTRATIVE RELIEF

I.

The Petitioners, Albert J. Fritsch, A. Blakeman Early, and Center for Science in the Public Interest, a corporation, petition the Federal Trade Commission to take such steps as are within the scope of the Commission's authority to protect the public from the hazards of asbestos.

II.

Petitioners Albert J. Fritsch and A. Blakeman Early are citizens of the United States and as such are qualified to petition the Federal Trade Commission to take action within the scope of its authority under Part I, Subpart B, Section 1.15 of the Federal Trade Commission Rules and Regulations, 16 C.F.R. 1.15, 32 Fed. Reg. 8445, June 13, 1967. The Center for Science in the Public Interest is a non-profit corporation having incorporated in the District of Columbia for charitable, educational, scientific, and literary purposes. As such it qualifies to petition the Federal Trade Commission through its representative, under the same authority.

III.

The Federal Trade Commission is empowered by the Federal Trade Commission Act to prohibit unfair and deceptive acts and practices as well as the dissemination of false advertising with respect to all foods, drugs, devices, cosmetics, or any retail article used for consumption or in the household which affects or travels in interstate commerce. 15 U.S.C. §45 et. seq. In addition, the Federal Trade Commission has authority under the Fair Packing and Labeling Act to prescribe standards of labeling and packaging for all consumer items which are not foods, drugs, devices or cosmetics, and which affect or travel in interstate commerce. 15 U.S.C. §1454 et. seq. The Federal Trade Commission also has authority under the Textile Fibers Products Identification

Act to require disclosure of all ingredients constituting more than 5% of the fiber content of all textiles which affect or travel in interstate commerce. 15 U.S.C. §70 et. seq. Therefore, the Federal Trade Commission is the appropriate agency to take the actions requested below.

IV.

The following brief summary of asbestos hazards, as set forth more comprehensively in the enclosed document, Asbestos and You (Exhibit I), demonstrates the urgent need for asbestos usage controls.

Until recently, the most prevalent and conclusively proved hazard associated with asbestos was a disease known as "asbestosis." Asbestosis is a scarring of the lungs incurred from breathing large doses of asbestos. Such quantities are found only in the work environment. (Exhibit I, p. 10). A growing body of epidemiological evidence links exposure to asbestos fibers with lung cancer. The most disturbing aspect of this evidence has been the lower and more intermittent exposures apparently received by bronchogenic cancer victims compared with the exposures received by asbestosis victims. Occupational Exposures to Asbestos, U. S. Department of Health, Education, & Welfare, National Institute for Occupational Safety and Health, pp. 111-118. Lower exposures are also sufficient to link asbestos with mesothelioma, a malignant tumor of the lung cavity (Exhibit I, p. 16). Some occupational exposures to asbestos fibers which are believed to cause lung cancer and mesothelioma are no greater than what many members of the general population receive. (Exhibit I, p. 20).

The long latency period between occupational exposure and the development of cancer and mesothelioma allowed these dangers to go unnoticed for years, thus resulting in the present health disaster among asbestos workers. Evidence indicates that non-occupational exposure requires an even longer latency period before the health hazards become manifest. A health crisis of major proportions is most likely developing throughout the United States caused by increased use of asbestos and asbestos-containing consumer products in recent decades.

Asbestos and You (Exhibit I, pp. 27-29) illustrates the presence of asbestos "bodies" in large segments of the urban population and asbestos fibers in urban air. There can be little doubt that asbestos-containing consumer products contribute to the presence of both the "bodies" and the airborne fibers.

Millions of Americans are receiving daily exposures to asbestos fibers from infancy through old age. At this date, evidence as to the cumulative effects of non-occupational exposure is non-existent. It can reasonably be assumed that today's children will receive a lifetime exposure, which will be much higher than the exposure of a prior generation, unless steps are taken to reduce the unnecessary use of asbestos which results or may result in fibrous emissions. The possible effects of this lifetime exposure could conceivably reach the cumulative levels of lower occupational exposures from which some workers contract cancer and mesothelioma.

A study by Jan Lieben of 42 people who died of mesothelioma between 1958 and 1963 disclosed one victim whose only known exposure occurred when he applied asbestos cement to his home boiler; another victim was a 14 year old boy who once had helped his father remodel their home by cutting asbestos-containing plaster board. (Exhibit I, fn. 82) This illustrates the danger to "do-it-yourself" homeowners who can easily release asbestos fibers by cutting or sanding asbestos-containing products wherein the fiber is normally fixed or "permanently" bound. A hazard exists to consumers who use asbestos-containing products which later disintegrate or are intentionally destroyed, as in the dismantling of asbestos building materials.

Evidence in Asbestos and You (Exhibit I, p. 26) of the mounting numbers of gastro-intestinal cancer victims among asbestos workers highlights the asbestos hazard presented by ingestion of asbestos-containing foods and drugs.

Although many consumer products are not within Federal Trade Commission jurisdictional control, it is necessary for the Commission to consider the possible cumulative effect of all exposures received by the general public when analyzing whether labeling of those products within Commission control is adequate. Where the health of the public is concerned, prudence dictates that the burden to demonstrate the safety of asbestos-containing products rests squarely on the manufacturer. It is the manufacturer's duty to warn consumers of possible hazards to which they may be unknowingly exposing themselves.

V.

The Federal Trade Commission has the power to order a party to affirmatively disclose danger which might result from the use of a product, as

requested in Items 1, 3, and 4 below, according to Sections 5, 6(g), and 12 of the Federal Trade Commission Act, 15 U.S.C. §45(a)(1) and 52(a), and as interpreted in F.T.C. v. Raladam Co., 316 U.S. 149 (1949) and Arnold v. F.T.C., 132 F.2d 165 (C.A.D.C. 1945). The following items found in Table I of Asbestos and You (Exhibit I, p. 50) are representative of types of products for which affirmative disclosure should be ordered pursuant to Item I, below: blankets, bags, brake linings, braid, cement and cement products, clothing, curtains, fabrics, filters, insulation, packing, paints, textiles, twine, wall board, wool, and yarn. The action requested in Item 2, below, is inherent in the Federal Trade Commission's powers. The Commission derives its power to promulgate the regulations requested in Item 5, below, from Sections 4 and 5(a) of the Fair Packaging and Labeling Act, P.L. 89-755, 15 U.S.C. §1453 and 1454(a). Authority to promulgate the regulations requested in Item 6 below is derived from Sections 3 and 7 of the Textile Fibers Products Identification Act, P.L. 85-897, 15 U.S.C. §70(a) and 74.

VI.

The hazards of asbestos are usually associated with breathing asbestos-laden dust in concentrations found mainly in the work environment. It is, however, because a minimum safe dosage has not been established below which man is safe from cancer and mesothelioma, because millions of Americans are known to be exposed through the use of consumer products, and because asbestos inhalation and ingestion could have cumulative harmful effects on great numbers of citizens, that the petitioners hereby ask the Commission to take the following action:

1. Order those parties who produce and sell consumer household items, including foods, drugs, devices, and cosmetics which are capable or can be rendered capable of releasing asbestos-containing particles into the air through use, abuse, deterioration, or destruction of such product, to affirmatively disclose in their advertising that such products contain asbestos which is harmful when inhaled or ingested;

2. Instigate immediate investigation into all products under Federal Trade Commission authority, to determine those which contain asbestos, to determine the likelihood of consumer exposure, and to establish criteria upon which rule-making requiring disclosure of asbestos could be based;

3. Promulgate regulations adequate to establish which new products would be required to affirmatively disclose in advertising that asbestos is an ingredient, pursuant to the investigation conducted in Item 2, above;

4. Initiate an investigation of the dose-response relationship as to the ingestion of asbestos through the stomach and promulgate regulations for affirmative disclosure in advertising for all asbestos-containing foods and drugs;

5. Promulgate regulations requiring the disclosure of asbestos as an ingredient on the labels of all appropriate consumer products, not to include foods, drugs, devices, or cosmetics; and

6. Promulgate regulations for adequate packaging to assure the prevention of asbestos fiber release during transportation and before sale of all appropriate consumer products.

March 22, 1973.

Respectfully submitted:

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Center for Science in the Public Interest,
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