

Geffrey W. Anderson, Esq.
Howell, Dorman, Anderson, Berg & Smyer, L.L.P.
Attorneys at Law
University Center 1, Suite 110
1300 South University Drive
Fort Worth, TX 76107

Dear Mr. Anderson:

Your letter and its enclosed product addressed to Mr. James Jones of this agency was forwarded to this office for response.

Your letter enclosed a product called the Air Blow Gun (ABG), manufactured by Barjan Products of East Moline, IL. The ABG is described as a length of 11.5-foot coiled 1/4 inch vinyl tubing with brass fittings on either end and a lever-type blow gun. The ABG attaches to the vehicle's compressed air system which supplies compressed air for its air brake system. When attached to the air system, it can be used to clean various surfaces with air pressure. The ABG's container carries the notation "D.O.T. approved." You stated that your client is concerned about this product's claim that it is "D.O.T. approved," and asked whether it is in fact approved by the US Department of Transportation and whether or not such representation constitutes false advertisement.

By way of background information, the National Highway Traffic Safety Administration (NHTSA), by delegation from the Secretary of Transportation, has the statutory authority to issue Federal motor vehicle safety standards (FMVSS) applicable to new motor vehicles and new items of motor vehicle equipment (49 U.S.C. Chapter 301). That statutory scheme establishes a self-certification system under which motor vehicle and equipment manufacturers themselves certify that their products comply with all applicable FMVSSs. Most of the FMVSSs that apply to motor vehicle equipment require such equipment to be certified by the manufacturer. That certification is often shown by marking the product itself with the letters "DOT." NHTSA enforces compliance with the standards by purchasing and testing motor vehicles and equipment. The agency also investigates safety-related defects. If NHTSA or the manufacturer finds that a vehicle or item of equipment does not comply with applicable standards or is found to have a safety-related defect, the manufacturer is responsible for remedying the defect or noncompliance at no charge to the customer. Thus, NHTSA neither approves, disapproves, endorses, tests, nor grants clearances for products prior to their introduction into the retail market.

Turning now to the ABG, we would classify it as an item of motor vehicle equipment, which is defined in 49 U.S.C. 30102(a)(7)(B) as any "part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle." The ABG would be classified as an accessory if it meets the following two tests:

- a. A substantial portion of its expected uses are related to the operation and/or maintenance of a motor vehicle; and
- b. It is purchased or otherwise acquired, and principally used, by ordinary users of motor vehicles.

After reviewing the product and the information on its container, we conclude that the ABG is an accessory. While the ABG is a motor vehicle accessory, NHTSA has not issued any FMVSSs establishing performance standards applicable to this particular product. Thus, it is not required to be certified or marked with the "DOT" symbol.

The notation "D.O.T. approved" appears in four places on the ABG's container. As pointed out above, NHTSA does not approve motor vehicle equipment or accessories, nor can the phrase "D.O.T. approved" be interpreted as the manufacturer's certification of compliance with applicable FMVSSs.

We appreciate your advising us of this matter. We will contact Barjan Products, the manufacturer of the ABG, with a view to resolving the situation.

I hope this information is helpful to you. Should you have any further questions or need additional information, feel free to contact Walter Myers of my staff at this address or at (202) 366-2992, or by fax at (202) 366-3820.

Sincerely,
Frank Seales, Jr.
Chief Counsel
ref: #121#VSA
d.3/23/99