

FILE NAME: Flintkote (FLK)

DATE: 1976 Oct 8

DOC#: FLK022

DOCUMENT DESCRIPTION: Memo RE Product Liability Private Labels

Mr. C. T. Derry
Rutherford

Product Liability
Private Labels

S. Weiss
Rochelle Park

October 8, 1976

Relative to your letter of September 9, 1976 addressed to Mr. J. C. Schmitt which we discussed during a telephone conversation on September 13, 1976, we met with insurance company representatives to discuss the method of handling the product liability exposure connected with customers' private labels and we were advised as follows:

1. If a customer's private label, designed by the customer, is applied to the product by Flintkote, any and all liability that is incurred as a result of label deficiencies will be Flintkote's.
2. If Flintkote's product is shipped to the customer and the customer applies his private label, which he has designed, Flintkote will still be liable but at a lesser degree than in #1 above. Because Flintkote is introducing the product into the stream of commerce, it is Flintkote's responsibility to apply all necessary warnings and cautions even though the customer may re-label the container at a later date. If we apply the private label at the time it is shipped from the plant, we would not have a defense for actions taken against us for inadequate labeling.
3. If Flintkote provides customers with product data sheets and if the customer indemnifies and holds Flintkote harmless for liabilities arising out of inadequate private label content and design, it is still not certain that the courts would absolve Flintkote from any liability. It would be very difficult for us to defend ourselves if it is shown that we knowingly applied a label which was deficient.

Upon further discussion with the insurance company, we arrived at three optional procedures for protecting Flintkote's interests in the use of private labels. They are as follows:

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1. Flintkote apply to containers the required warnings, precautions, instructions, etc. separately and in addition to a label furnished by the customer.
2. Flintkote provide the complete label leaving a blank section for the customer to have his name imprinted.
3. Flintkote provide a model label and require the customer to duplicate without deviation the same information on any private label.

It is suggested that you consider the above options as solutions to the private label problem.

As an example of what can occur through an over-^{SIGHT}sight in labeling or advertising, we are enclosing a photo-static copy of an article entitled "Labels & Advertisements That Lead To Liability". You may wish to circulate this publication to concerned individuals.

SW:rv
Enc.

cc: Mr. J. C. Schmitt	- Rochelle Park w/e
Mr. J. C. Harkness	- Rutherford w/e
Mr. W. H. Mortonson	- Rutherford w/e
Mr. J. J. Moran	- Rutherford w/e
Mr. A. R. Hooker, Jr.	- Rutherford w/e
Mr. H. F. Stepanek	- Rochelle Park w/e
Mr. T. H. Parke, Jr.	- Stamford w/e