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How Labeling Legislation Affects the Paint Industry

Labeling legislation is an anomaly. It appears as simple as ABC. It is really as complex in its application and effect as the formulation for a hydrogen bomb. It can affect a careless manufacturer or distributor with destruction as far-reaching as an atomic bomb.

Labeling laws and regulations are by no means simple matters requiring observance at the risk of fines or seizures of misbranded products. Carelessly labeled products can produce fines and may result in seizures by the enforcement authorities, but when there has been careless labeling, the result can also be a court trial with verdicts against the manufacturer or distributor, or both, well up in the six figure category. This is not idle talk, this is fact. In the neighboring State of Florida in 1958, the widow of the purchaser and user of a gallon of carbon tetrachloride collected one hundred sixty thousand dollars because of negligent labeling under the Florida law. The turning point in that case was that the judge at the trial court refused to decide as a matter of law that there was not a sufficient showing of negligence and allowed the case to go to the jury to determine factually whether there was negligence by the manufacturer or contributory negligence by the user.

In ruling on the appeal in this case (Tampa Drug Co. v. Wait, decided May 7, 1958) the Florida Supreme Court laid down the following strict rule for labeling:

> "Implicit in the duty to warn is the duty to warn with a degree of intensity that would cause a reasonable man to exercise for his own safety the caution commensurate with the potential danger."

There is a common law liability imposed upon every manufacturer and upon each distributor who is dealing with a product that may have some latent or hidden hazard adequately to warn those who buy the product of the extent of that hazard and to direct the proper use of it, with cautions sufficient to enable a reasonable and prudent man to avoid any use that might harm the user; yet as a practical, everyday matter of fact, there is a question as to how many people who buy materials with labels plainly on them adequately and clearly directing the use of them (as courts require) pay any attention whatever to the warnings or directions, or even read the same. Those who have been dealing with hazardous household product laws frequently recall a popular anecdote derived from a cartoon showing a man looking into a medicine cabinet with his wife talking to him and giving him a precautionary warning.

"Now, be careful," she warns. "The vitamins are in the deodorant jar, the cough syrup is in the old sudsy ammonia bottle, and the aspirins are in the bottle marked poison."

What good are labels in that house? Yet to some extent, this is what is happening in many of our households.

The fact that people do not pay too much attention to labels does not change the burden the common law places upon those who manufacture, sell, loan or give away an article which is potentially harmful, to users of any peril or hazard involved in its use.

Before discussing the effect of labeling legislation on paint manufacturers, dealers and distributors, let us take a quick bird's eye view at the type of labeling legislation which is in effect throughout the country today.

There are essentially two types of legislation -- precautionary labeling laws and formula labeling laws. The distinction between the two is that precautionary labels are designed to protect users from harm through improper use of products, while formula labels are designed to protect retail purchasers against fraud and deceit with respect to the quality and nature of the product.

To prevent fraud, formula labeling requires a statement of ingredients of a product to be placed on the label. The purchaser then knows what he is buying. He can compare any particular can of paint with any other as to contents. The ingredient statement is factual, not a general, "puffing" statement.

Eleven states now require formula labeling of products handled by paint distributors and dealers. These states are Alabama, Iowa, Minnesota, Mississippi, Montana, Nebraska, North Dakota, South Dakota, Vermont, Virginia and Wyoming. Generally, the formula labeling legislation, since its object is to protect retail purchasers, exempts industrial transactions from its coverage. This is logical and practical. The industrial user, buying in large quantities and frequently by specification, pretty well knows what is in the product that he is purchasing. If labeling is required as a safety measure by the Department of Labor of the particular state involved, that is a matter which can be taken care of after the shipment reaches the receiving room of the plant or through special provisions in the purchase order.

Precautionary labels, which are designed to acquaint users with hazards existing in the use of products, are divided into two large subdivisions as far as our industry is concerned. There is one group of laws that is directed toward precautionary labeling of paint and paint products. There is another group of laws which cover paints and paint products as well as many other chemical and pharmaceutical items. We will call the first category paint labeling legislation, and the second, hazardous household products legislation.

States with laws on hazardous substances are California, Colorado, Hawaii, Illinois, Indiana, Kansas, Massachusetts, New Jersey, New York, Ohio, Oregon, Texas and Vermont. These hazardous products laws relate generally to retail sales and do not seek to bring under their jurisdiction industrial transactions which do not involve a marketing of the product as such to individual members of the public.

The following states have labeling statutes limited to paint products as such: Alabama, California, Georgia, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Mississippi, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, Vermont, Virginia and Wyoming.

In many of the states there are both hazardous household products laws and regulations as well as paint labeling laws. In some instances this overlap is taken care of by excluding paints from hazardous household product acts where special provisions have been made for paint.

The cities of New York, Buffalo and Baltimore have special municipal ordinances relating to paint. The Fire Department in New York has one set of regulations to protect against the hazards of flammability and combustibility, while in the same city the Health Department has other regulations to protect the health of its citizens from harmful ingredients in paint.

The Interstate Commerce Commission prescribes labeling requirements for flammable liquids or solids which cover paints and paint products with flash points of 80°F. or lower. The same regulations provide specific methods of packing and contain specifications of containers, with special rules for those liquids with a flash point under 20°F.

Labeling legislation can do the greatest harm to our industry and to our distributors by a lack of uniformity in the warnings provided. Imagine the confusion if each of the 50 states and possibly each of 100 cities would avail themselves of their right to prescribe their own warnings and warning legends for hazardous products. If they should define hazardous products as each sees fit, some including thinners and others excluding thinners, with different labels for each, we could have a grand and glorious hodge-podge of variegated laws and a perfect chaos of prescribed labels, so that for a manufacturer sending out products to 20 states would need 20 different labels. We can thank Providence that this worst aspect of the exercise of the rights of legislative bodies in states and municipalities has not been so exercised.

The Manufacturing Chemists Association, the Chemical Specialties Manufacturers Association, and the National Paint, Varnish and Lacquer Association for years have been fighting for uniformity in labeling. If we can obtain legislation throughout the country which will permit one label for each hazardous class of products to meet the requirements of all states, we will have reached Utopia.

Strange as it seems, we are not too far off from this desirable state. In 1954, our Association adopted recommendations for labels which also embraced the hazards of flammability and combustibility where there was no harmful ingredient. You are probably all familiar with these recommended labels. Because of recent advances in labeling legislation in various states, and because of the desirability of additional warnings, our Legislative Committee met this year and recommended to the Executive Committee of our Association a new, revised set of labels which do not depart too much from the existing recommendations, but which add the warning "Keep out of reach of children" for all labels, and emphasize the requirements to use products with adequate ventilation. We have high hopes (like that 50-billion kilowatt, dam-wrecking ram) of reconciling the wording on labels in New York and in Baltimore with the wording required for all other states now having precautionary labels. The Law Department in the City of Baltimore, in fact, is now considering a label which will meet our requirements and we are assured that New York City will not be a lone holdout in the event that we work out standardized wording.

Now, let's get back to the subject of this talk. If we can secure labeling legislation which is a practical, common-sense nature and which, above all, is standard and uniform, the effect of labeling legislation on our industry will be beneficial rather than disruptive. The Federal Government is even now considering legislation for hazardous products in interstate commerce which is in line with the hazardous household product laws that have been adopted in the states above listed. Since the hazardous household products laws touch paint only incidentally, but make unnecessary specialized paint labeling legislation, the lead in this matter is being taken by the Manufacturing Chemists Association and the Chemical Specialties Manufacturers Association. The Magnuson Bill on hazardous household products (S-1283) will not require any changes in labeling that currently are required under virtually all other similar state laws.

One very beneficial key clause in most current legislation is the one that permits alternate warnings equivalent in meaning to the wording of labels set out in the law.

Now, permit me to say a few words about the general work done by our Association on labels through the past years, looking toward the protection of our members and the distributors of paint products. The development and promulgation of the 1954 precautionary labels marked a step toward uniformity in labeling which cannot be over-emphasized. There was criticism, and there is still criticism, from individuals who have particular problems concerning the extent to which our association went in observing what was believed to be a duty to the public in providing and recommending to our member manufacturers labels of authority and integrity for products of known hazard with respect to ingredients, flammability or combustibility. I have been amazed at the courage and foresight evidenced by the records of our association during the administration of our late lamented president, Ernest Trigg, as well as during the administration of President Battley. As problems involving labeling came up, a strong and firm stand has been taken for warnings which would protect the public. In doing this the association was also protecting the product liability of its own members.

This does not mean that over-labeling is desirable. It can be worse than under-labeling. If a manufacturer overstates the perils inherent in his products, he is estopped from denying their full validity if he is ever called into court on a negligence case involving his liability for damages. His own statements, even if not true, will be used against him at trial. He possibly could escape any damages if he had properly and precisely labeled his product and in this sense, over-labeling is just as undesirable as under-labeling. Under-labeling, on the other hand, makes possible substantial damages for negligence in the event of harm coming to the user of a product because of failure to give adequate warning.

I said that labeling is anomalous in that it looks simple while it is extremely complex. The aspects of over-labeling and under-labeling emphasize this consideration. There is, however, still another very important, possibly most important, consideration for manufacturers or distributors with respect to their labeling. That is the public relations consideration. One can well over-label a product so as to scare the public away from it. This is neither right nor proper. It is uneconomical. It demonstrates the need for a careful precision in meeting responsibility. The ideal label is one that is adequate and fully warns the user against any potential harm or peril in the product, but yet does not through tactless and injudicious wording make a possible buyer drop the can like a hot potato when he is reading the label in a retail store.

In labeling, as in all other matters with which you are concerned, our association is ready and anxious to receive any inquiries and suggestions from the field and to provide the best advice it has on any problem. We welcome all constructive criticism and this is true not only for our president and the staff in Washington, but for the policy making group in our association, the Executive Committee. Let me give you an illustration of what happened during the last year on labeling. In January, 1959, when we were worried about the State of New Jersey going to extremes with respect to a paint labeling law, we prepared and our Executive Committee approved a model state paint labeling act. We presented our data to the Executive Committee. There was one dissenting report which focused attention sharply upon one issue: Should we as a matter of policy proceed with a law solely and wholly directed to the paint industry, or should we support reasonable legislation for hazardous household products which only incidentally cover the paint industry? At that time it was decided to proceed with the model state paint labeling law as our first line of defense in state legislatures where undesirable legislation affecting our industry had been introduced. The minority report was considered but disregarded. After about six months had passed, however, those who had continued to think about the minority report asking preference for the hazardous product legislation changed their views. They recommended to our Executive Committee that the hazardous product legislation become the first line of defense against inequitable state legislation, reserving the model state paint labeling law as a second line of defense. Our Executive Committee looked into all of the points, debated the issue, and adopted the view which was at first expressed only by a single member of the Legislative Committee.

There is a response in our association to the requirements of a dynamic, rather than a static, industry. Our association accordingly always welcomes the views of all, because there is so much new that must be digested month by month and year by year that a failure to give consideration to all points of view would be fatal. That has always been the habit of President Battley and, as I say, the broad point of view seems to me to ride both down and up from his office.

Let me thank you for the privilege of addressing you. I hope that what I have said has been of some value to you. You must remember that you are listening to a newcomer in an industry where a lifetime does not teach you all there is to know. Although I may sound positive and didactic in making statements, there is no one who appreciates more than I the fact that I haven't begun to scrape the surface of knowledge of the problems in our industry. So I am doubly thankful for the attention with which you all listened to this talk.