

EPA Fines Computer Keyboard Manufacturer for Making Unverifiable Antimicrobial "Public Health" Claims

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The U.S. Environmental Protection Agency (EPA) continues to emphasize enforcement against companies that market or sell products with unregistered claims of protection against disease-causing bacteria and other microbes. In a settlement announced September 28, 2011, EPA levied a fine of \$261,000 against computer keyboard and mouse manufacturer, Logitech Inc., for making "unsubstantiated public health claims" about its products in violation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Logitech incorporated into its products a widely-used silver-based additive manufactured by AgION Technologies Inc. that is registered with EPA as a product preservative. Products that incorporate such additives are allowed to claim protection against bacteria, mold and mildew that cause odors, staining, or deterioration of the product. Such products are *not* allowed to claim explicitly or to imply that the product offers protection to consumers against bacteria or other microbes.

In product labeling and marketing materials, Logitech had stated that the silver-based compound provided "protection to prevent the growth of a broad range of bacteria, mold and mildew" and "guards against growth of a broad range of bacteria." EPA policy contends that unqualified claims of antibacterial efficacy are potentially misleading to consumers if

they fail to make clear that the additive only serves to protect the product from bacterial deterioration and odors, and does not protect human health. An EPA official noted that "unverified public health claims can lead people to believe they are protected from disease-causing organisms when, in fact, they are not." In settling the case, Logitech did not admit liability or that the claims violated FIFRA regulations. After being contacted by EPA in 2008, Logitech stopped making the antimicrobial claims for their products and revised their product packaging.

Products that kill or repel bacteria or germs or claim to do so are considered pesticides and must be registered with EPA before their sale or distribution. Products that incorporate additives, such as the silver-based compounds in the Logitech case, do not have to be registered with EPA so long as the additive is registered and claims are limited only to protection of the product itself. In registering such additives, EPA does not require submission of data demonstrating the antimicrobial efficacy of the compound. In contrast, products that make "public health" claims must submit extensive data demonstrating efficacy against specific bacteria, viruses, or other microbes. Products may only bear claims that are consistent with the EPA-approved label for the product or antimicrobial additive.

Given EPA's continued enforcement in this area, companies should consider carefully the types of antimicrobial marketing and labeling claims that are made for products that incorporate additives intended to minimize bacterial odors and deterioration rather than to protect users from disease-

causing microorganisms.