

ECONOMIC POISONS: Incidental differences such as differences
STATUTORY CONSTRUCTION: in size, shape or color of labels, or dif-
DEPARTMENT OF AGRICULTURE: ferences in trade names or advertising
 emblems on labels, does not preclude regis-
 tration of two or more economic poisons as
a single product under Section 263.300, RSMo 1959, of the Economic
Poisons Law when the writing on such labels is identical with respect
to showing that the products have the same formula, are manufactured
by the same person, the labeling of which contains the same claims and
identifies the products as the same agricultural chemical.

OPINION NO. 172

May 28, 1968



Mr. Lester H. Barrows
State Entomologist
Department of Agriculture
Jefferson Building
Jefferson City, Missouri

Dear Mr. Barrows:

This is in response to your request for an opinion with respect to the Missouri Economic Poisons Law. Your request, in which you quote pertinent portions of Paragraph 1, Section 263.-300, RSMo 1959, is as follows:

"For an example, we are enclosing several sets of labels which the manufacturing companies have requested we register as one product, since the active ingredient is the same and they are manufactured by the same company. Now, what we need to know is whether the statement, 'Products which have the same formula and are manufactured by the same person, the labeling of which contains the same claims, and the labels which are identical with the exception of the trade name and which bear a designation identifying the product as the same agricultural chemical, may be registered as a **single product**', implies that these labels can be registered as one, or if the labels have to be identical in all ways, i.e. color, size of label, content of label, etc., except for the trade name."

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The meaning of the phrase "the labels which are identical" is to be determined by the context and the apparent purposes of the statute in which it is used. It appears from the samples which you enclosed that a label is a piece of paper or other material affixed to the container of the product to indicate its origin, nature and contents. A label is intended to indicate the article contained in the bottle, package or box to which it is affixed. Higgins vs. Keuffil, 140 U.S. 428, 33 L.Ed. 470.

To effectuate the purpose of the statute, the word "identical" must be construed in a not too restrictive manner. As stated by the court in Boling vs. Buckeye Incubator Co., 33 F. 2d 347, 348: "Its proper construction might be expressed in the phrase 'without material change' . . ." In Foxborough Co. vs. Taylor Industries Co., 157 F. 2d 226, 228, the court construed the word "identical" as used in a federal statute relating to claims that are identical with an original patent, as follows: "Although the amendment used the word identical, we read this as 'substantially identical' . . ." In Bellows vs. Travelers Insurance Co., 203 S.W. 978, the Supreme Court of Missouri en banc stated:

"'Substance', as its etymology indicates, is that which stands under and supports all phenomena whether material or mental. It is the essence of the thing itself, and is that element of which the law takes notice in administering concrete justice. A proposition is substantially true when it is essentially true, and it is essentially true when it states the substance of the thing to which it refers. We know of no word that can better express the real and practical nature and effect of an act than the word 'substantially'. It indicates all that is substantial in the result.* * * *"

It follows, therefore, that when the writing on the labels shows that the products have the same formula and are manufactured by the same person, the labeling of which contains the same claims and bear a designation identifying the product as the same agricultural chemical, such labels are substantially identical within the context and purpose of the statute which prescribes their use, regardless of such incidental features as color, size or shape of the labels or advertising emblems placed on the labels.

CONCLUSION

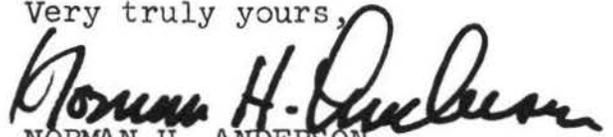
It is the opinion of this office that incidental differences such as differences in size, shape or color of labels, or differences in trade names or advertising emblems on labels, does not preclude registration of two or more economic poisons as a single product

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under Section 263.300, RSMo 1959, of the Economic Poisons Law when the writing on such labels is identical with respect to showing that the products have the same formula, are manufactured by the same person, the labeling of which contains the same claims and identifies the products as the same agricultural chemical.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Very truly yours,


NORMAN H. ANDERSON
Attorney General