

You then set forth a number of reasons as a basis for your position that you should be able to reproduce the "third-party agency symbol." You requested that this office further address your concerns.

In attempting to further respond to you, the following discussion specifically addresses UN 4G combination packagings and generally reiterates what we have discussed in previous phone conversations:

1. The packaging "manufacturer," as defined at 49 CFR 178.2(e), is responsible for ensuring that each package is capable of passing the prescribed tests. [§ 178.601(b)] "Manufacturer" means the person whose name and address or symbol appears as part of the specification markings required by this part or, for a packaging marked with the symbol of an approval agency, the person on whose behalf the approval agency certifies the packaging. "Specification markings" mean the packaging identification markings required by this part including, where applicable, the name and address or symbol of the packaging manufacturer or approval agency. [§ 178.2(e)]

2. For a tested design type, if the packaging manufacturer changes any component, it is the packaging manufacturer's responsibility to ensure that the packaging with changed component does not differ from the previously tested design type. [178.601(c)(4)] Otherwise, the packaging must be retested.

3. Only the packaging manufacturer, as identified through the specification marking, or a person acting on the manufacturer's behalf, may make component substitutions to packagings for which the manufacturer bears responsibility for compliance.

4. Based on the information you provided, the response given to you in our February 20, 1997, letter assumes that your competitor, and not your customer, is the manufacturer on whose behalf an approval agency has certified the packaging. To reproduce a packaging, including specification markings, without the permission of the manufacturer, is a violation of 49 CFR 171.2(c). If a manufacturer produces a packaging and places UN specification markings on the packaging, including the symbol of an approval agency that certified a packaging for a competitor, the manufacturer would be representing to the public that the approval agency had certified its package when in fact the approval agency had never performed testing on that packaging. This type of misrepresentation also would be a violation of 49 CFR 171.2(c).

5. If your customer is the packaging manufacturer, you may produce a replacement packaging component (for instance, a finished box blank or a knocked-down fiberboard box) if the manufacturer accepts responsibility for this change and ensures it does not differ from the original component (e.g., design, manufacturer's joint, board strength, board weight, water resistance, etc.) Also, it is the responsibility of the manufacturer to ensure that such a change is not inconsistent with any specific description of the component contained in the test report required by § 178.601(l). For example, if the test report specifies a fiberboard box made by a specific company, substitution of another company's box would invalidate the report; i.e., it would not be possible to link the report to the altered packaging. In this latter instance, the report may be amended by the packaging manufacturer to reflect the change. For a report produced by an approval agency, amendment of the report must not violate the conditions and limitations of the approval agency's certification and may necessitate obtaining the permission of the approval agency.

I hope this information is helpful and apologize for the delay in responding.

Sincerely,
Original signed by
Edward T. Mazzullo

Edward T. Mazzullo
Director, Office of Hazardous
Materials Standards

mazzullo:gt:dhm-10:68553:02/11/98
Revised:mazzullo/monniere:dhm-10/dcc:02/12/98
File:178.601
SC:330
c:\let\mazzullo\stone.298