



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO  
Attorney General

DIVISION OF SOCIAL JUSTICE  
Environmental Protection Bureau

April 3, 2007

**VIA FACSIMILE & OVERNIGHT MAIL**

Jack McGuire, Interim President  
American Red Cross  
National Headquarters  
430 17th Street, N.W.  
Washington, D.C. 20006

**Re: Request for urgent meeting -- Clorox/Red Cross marketing partnership**

Dear Mr. McGuire:

The undersigned Attorneys General of New York, Illinois, Connecticut, Maryland, Vermont, Oklahoma, and Arizona write to request an urgent meeting to discuss the American Red Cross's participation in a cause-related marketing program with the Clorox company. We have recently been alerted that the U.S. Environmental Protection Agency has approved the use of the Red Cross symbol and mission statement on the labels of certain Clorox-brand antimicrobial products (examples at Attachment A). This agency approval is a patent violation of federal pesticide safety law, which expressly prohibits as "false and misleading" any "[s]ymbols implying safety or nontoxicity, such as a Red Cross . . ." (EPA Label Review Manual, Ch. 16, Sec. III.A.9, interpreting 40 C.F.R. § 156.10(a)(5) [emphasis added])<sup>1</sup>

EPA's label approval additionally violates the Federal Trade Commission's Environmental Marketing Guidelines, which provide that it is "deceptive to represent, directly or by implication, that a product . . . offers a general environmental benefit," as is the case where "[a] product label contains an environmental seal . . . likely to convey to consumers that the product is environmentally superior to other products." (16 C.F.R. § 260.7 at Example # 5.)

The marketing of Clorox's illegally labeled products threatens to severely compromise consumer safety in our respective states. EPA's own documents show that trusted symbols connoting health, like the Red Cross logo, have been empirically demonstrated to increase consumer perception of product safety, and decrease the likelihood that use precautions on the rest of the label text will be read or followed. Such precautions are critically important for

<sup>1</sup> EPA's Label Manual is available at: [www.epa.gov/oppfead1/labeling/lrm](http://www.epa.gov/oppfead1/labeling/lrm).

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products as potentially dangerous as chlorinated bleach and household cleaners, which are the subject of literally thousands of poison control center calls annually in our respective states.<sup>2/</sup>

Our position is shared by the Association of American Pesticide Control Officials, those state and local pesticide regulators best positioned to understand the hazards of improperly labeled pesticides (See Attachment B, AAPCO letter to U.S. EPA.) The powerful visual and associative effect of the Red Cross symbol and text on the subject product labels – text and graphics which precede, and visually dominate, the precautions on the back panel labels – is in no way obviated by the Red Cross's statement of nonendorsement.

With Clorox's intended launch date in April 2007 for its cause-related product line, pesticide regulators in our respective states are now placed in the untenable position of either registering Clorox products that they believe to be illegally labeled,<sup>3/</sup> or alternatively, denying their states' residents market access to such popular and widely used products as Clorox bleach. Therefore, should the Red Cross proceed with its Clorox partnership as presently constituted, the undersigned, in consultation with their respective state regulatory agencies, will explore legal options against U.S. EPA for allowing illegally and unsafely labeled products from entering the stream of commerce.

On a final and more positive note, we understand that Clorox disinfection products are very valuable in the Red Cross's disaster relief work, and that, according to a recent Red Cross press release, "Clorox has been a proud supporter of the American Red Cross" for "more than 25 years" – even in the absence of cause-related marketing labels on pesticide products. (See Attachment C, Red Cross press release 3/12/07.) Indeed, your press release makes clear that Clorox donates widely and deeply to numerous charitable causes and organizations without requiring donees to countenance violations of federal law. Given the Red Cross's longstanding relationship with Clorox, the furor generated by the planned cross-marketing campaign in the regulatory and nonprofit communities, and the availability of numerous lawful vehicles for publicizing the Red Cross/Clorox partnership, we remain hopeful that Clorox would continue its

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<sup>2</sup> In 2005 alone, chlorinated bleach products accounted for more than 54,000 calls to Poison Control Centers nationwide. More than 50,000 of the calls arose from unintentional exposures, and almost 20,000 calls involved children under the age of 6. Lai, M.W. et al., 2005 Annual Report of the American Association of Poison Control Centers' National Poisoning and Exposure Database, *Clinical Toxicology* 44:803-932, at 882 (2006).

<sup>3</sup> The Federal Insecticide, Fungicide, and Rodenticide Act preempts states and localities from regulating the content of pesticide labels. See 7 U.S.C. § 136v(b) (proscribing "any requirements for labeling or packaging in addition to or different from those required" under federal law.)


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support of the Red Cross even if it were denied use of the Red Cross symbol and mission on pesticide product labels.

The undersigned Attorneys General urge you to work with Clorox to forestall the intended April 2007 launch of this marketing campaign until a meeting between the Red Cross and our designees may be convened. This meeting must take place by April 9, 2007. Please contact Gordon J. Johnson, Deputy Bureau Chief, or Michael Surgan, Ph.D., Chief Scientist, Environmental Protection Bureau, New York State Attorney General's Office, at 212-416-8446 and Gordon.Johnson@oag.state.ny.us or Michael.Surgan@oag.state.ny.us, to confirm such a meeting or if you have any questions.

Sincerely,

ANDREW M. CUOMO  
Attorney General of New York  
By:

  
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cc: Stephen Johnson, Administrator, U.S. Environmental Protection Agency