

**To:** Burnie Gillis, USPTO Trademark Specialist **Date:** June 8, 2020

**From:** Timothy J. Donnelly, Chief Administrative Officer,

**General Counsel and Secretary** 

Re: U.S. Trademark Registration No. 4522698 – YES

Response to Office Action Issued June 2, 2020

Dear Mr. Gillis,

In response to your Official Office Action issued against the above referenced mark regarding the Section 8 Affidavit, please be aware that AMVAC's industry is regulated on a federal and state level and use of trademarks directly on product labels must be approved by applicable government agencies.

Although our products are backed up with studies to show our products enhance yields, the YES mark has a positive connotation that could imply safety or non-toxicity or possibly be misleading. For these reasons, AMVAC does not wish to file regulatory applications for use of the mark directly on its product labels.

EPA rules and regulations regarding pesticide labeling can be found at 40 CFR §156.10, specifically, §156.10(a)(5)(vii) and §156.10(a)(6)(b)(2)(ii). Additionally, the EPA Label Review Manuel can be found here: <a href="https://www.epa.gov/sites/production/files/2017-09/documents/chap-16-aug-2017.pdf">https://www.epa.gov/sites/production/files/2017-09/documents/chap-16-aug-2017.pdf</a>

## 40 CFR §156.10(a)(5)(vii)

- (5) False or misleading statements. Pursuant to section 2(q)(1)(A) of the Act, a pesticide or a device declared subject to the Act pursuant to §152.500, is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include:
- (vii) A true statement used in such a way as to give a false or misleading impression to the purchaser;
- (6) Final printed labeling. (i) Except as provided in paragraph (a)(6)(ii) of this section, final printed labeling must be submitted and accepted prior to registration. However, final printed labeling need not be submitted until draft label texts have been provisionally accepted by the Agency.
- (b) Name, brand, or trademark. (1) The name, brand, or trademark under which the pesticide product is sold shall appear on the front panel of the label.
- (2) No name, brand, or trademark may appear on the label which:
- (i) Is false or misleading, or
- (ii) Has not been approved by the Administrator through registration or supplemental registration as an additional name pursuant to §152.132.

## EPA Label Review Manual, Section III, Unacceptable Graphics and Symbols (page 5) -

Examples of graphics and symbols that would generally be considered unacceptable include the following:

• Symbols implying safety or non-toxicity.

Applicant respectfully requests that the refusal be withdrawn and the Section 8 Affidavit be approved.