

Advertising Standards For the Mosquito Misting System Industry

**DRAFT
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The following standards are intended to apply to all facets of the mosquito misting industry, including the manufacturers of hardware and pesticides used in the systems and persons or companies that sell, install and/or service mosquito misting systems.

While there are no definitive federal or state regulations or guidelines regarding the kinds of advertising claims that can be made by persons who manufacture, install or service mosquito misting systems, there is sufficient precedent derived from enforcement actions taken by federal and state regulators in recent years to discern the types of advertising claims which are impermissible. Generally, the kinds of advertising claims which should be avoided refer to health, safety or environmental claims that regulators may deem to be “false or misleading.”

The following recommendations have been developed by a multi-stakeholder workgroup, comprised of a diverse group of government and industry organizations. Though violation of the recommendations are not enforceable under any particular federal or state environmental or consumer protection law, per se, they should be viewed as a reliable indicator of the types of advertising claims which should be avoided. If you wish to make a specific claim and are unsure whether it is permissible, we recommend that you consult with the appropriate regulators in the jurisdiction in which you intend to advertise, in advance of creating the advertisement.

The advertising restrictions discussed in this document are largely derived from regulations and precedents involving the pesticides dispensed by the systems. There are two types of pesticides that are frequently used in mosquito misting systems; conventional and exempt products. Because the regulations and precedents governing advertising claims are different for conventional and exempt products, this document has been structured to first discuss advertising standards for products that exclusively use conventional pesticides, followed by a discussion of systems that exclusively use exempt pesticides. Unless a system is designed to dispense only exempt products or the person or company selling or installing the system will only use exempt products, then the advertising is governed by the more restrictive provisions associated with conventional products.

What is advertising?

Under federal and state law, advertising is considered to be any written, pictured or spoken communication with the general public, customers or potential customers

designed to promote the sale of pest control services or products. This includes, but is not limited to, the following types of communications:

- radio or television advertising,
- billboard advertising,
- newspaper, magazine or other periodical advertising,
- promotional literature, such as brochures or door hangers,
- claims made verbally by company employees, in person, in correspondence or on the telephone,
- yellow pages advertising,
- internet advertising, and
- text or graphics on vehicles.

Advertising Standards for Systems that Use Conventional Pesticides Exclusively or Use Both Conventional and exempt Pesticides

Prohibited Statements and Guidelines

1.) Health and Safety Claims

Persons who manufacture, install or service mosquito misting systems may not make claims of absolute safety about either the products they use or the services they provide. These include such terms as “safe,” “non-toxic,” “harmless,” or “safe for children and pets.”

2.) Claims About Product Registration

.EPA registration, for example, means that EPA has only determined that the risks posed by the product’s use do not exceed the benefits associated with such an application. Therefore, some government agencies have taken the position that pesticide applicator businesses may not use the term “EPA registered,” “EPA approved,” “state approved,” or “state registered,” because doing so implies that there are no risks associated with the use of these products or that these agencies endorse, approve or recommend the use of a particular product, which they do not.

3.) Misleading Use of Other Terminology

In determining whether advertising claims are deceptive, government agencies evaluate not only the strict factual meaning of the advertisement but also the intent and the implications of the words in the advertisement. Statements that are literally true may be deceptive if they imply something that is false or only half true. Some words and phrases that have concerned government agencies in the past are “natural,” “natural based,” “among the least toxic chemicals known,” “safer,” or “safer products,” since these terms lack explicit definitions or universal

understanding and could be interpreted by consumers as meaning these products are free from risk.

4.) **Conflicting Information**

The text or graphics in an advertisement should not contradict label directions. For instance, an advertisement should not depict an applicator wearing shorts or t-shirts during applications if the product label requires the wearing of personal protective equipment. Similarly, an advertisement should not depict an application being made in the presence of children, customers or pets if the product label requires that persons or non-target species not be present during applications.

5.) **Environmental Benefits Claims**

The use of text or graphics that imply any of the following are prohibited in all forms of advertising: “environmentally friendly,” “environmentally aware,” “environmentally responsible,” “environmentally conscious,” “environmentally benign,” “good for the environment,” “biodegradable,” “contains all natural ingredient,” or make any vague, unspecified claim of environmental protection or benefit, where the environment refers to the earth, water, air or other things that consumers commonly associate with the environment.

6.) **Public Health Claims**

It is not possible to ensure that the installation and use of a mosquito misting system will eliminate the possibility of contracting a mosquito-borne disease, such as encephalitis, malaria or West Nile Virus. Companies should avoid making any claim that could lead a consumer to believe that the installation of a mosquito misting system will eliminate or diminish the likelihood of contracting a mosquito-borne disease. For example, companies should avoid advertising claims like “protects your health,” “protects your family,” or “combat West Nile Virus.”

Terminology to Avoid:

The following is a brief list of terms commonly used, but because they lack explicit definitions or universal understanding, they may be misleading or misused and should not be incorporated in any advertising media.

Organic – Any substance containing the element “carbon” is, by technical definition, organic, (both naturally occurring and man made products may be organic). The common misconception that organic and natural have the same meaning may cause confusion among the non-technical consumer. It is naturally occurring and not synthetic.

Organic Based – Generally used to describe a mixture of materials, which includes some organic materials. The portion of the product, which is both organic and natural, is frequently undefined.

Natural – A product derived from animal/biological, mineral or plant sources, in a form substantially as it occurs in nature is a natural product. However, materials may be altered or manipulated to put them in a physical form that allows them to be efficiently used in the application process by the homeowner or commercial applicator.

Natural Based – Generally used to describe a mixture of materials, which includes some materials, which may be properly described as natural. The portion, which is natural, is frequently undefined. The other elements may be man-made pesticides or fertilizers.

Prohibited Claims

Many of the prohibited claims have been discussed above. The following list includes claims prohibited under FIFRA: Specific prohibited claims from 40 CFR, Part 156.10 (a) – false and misleading claims include:

- A false statement about product effectiveness
- A reference to a product being recommended or endorsed by the government, (i.e. “EPA Approved”, or “EPA Registered”)
- A true statement used in such a way as to give false or misleading impression.
- Safety claims such as “environmentally safe”, “non-poisonous”, “non-injurious”, “harmless”, “nontoxic to humans and pets”.
- Non-numerical and/or comparative statements on the safety of the product including “contains all natural ingredients”, among the least toxic chemicals known”, pollution approved”.
- Claims, which contradict the label, (i.e. “easy to use”, when the label has lengthy use directions.)
- Non-numerical and/or comparative statements such as “biodegradable”, “environmentally friendly”
- Graphics which contradict the label of the product used in a system (e.g. a photograph depicting children or pets, though the product label says “may not be used when children or pets are present.”).

Guiding Principles for Permissible Claims:

The following are guiding principles which are consistent with EPA policy and recommended for all advertising media. All statements must be factual and must not violate “misbranding” provisions.

For example, acceptable claims include:

- Claims derived from the label, (i.e. product classification, product chemistry or percentage of active ingredient, or signal word).
- Claims must include all material facts and limitations surrounding the claims and, where applicable, must be identified as the opinion of the study author or the advertiser. Generalized statements such as “university tested” or “tested by experts” are unacceptable.

Factual statements cannot:

- In any way, diminish the importance of the labeling, label statements, or necessity to follow label directions; or,
- To the maximum extent possible, comparative statements should be limited to comparisons with similarly situated pesticide products. No comparative statements may be made for a product’s safety.

Advertising Standards for Systems that Use exempt Pesticides Exclusively

What is an exempt Pesticide?”

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) contains a certain provision (Section 25(b)) that exempts certain “minimum risk” pesticides from regulation by the U.S. Environmental Protection Agency. These products are frequently referred to as “exempt” or “25(b) products.” Though these products are exempt from federal regulation, many states (approximately 35) regulate and register these products in the same manner as conventional pesticides.

1. Health and Safety Claims

Persons who use EPA exempt products in misting systems are not prohibited from making safety claims about “minimum risk” products they are using. These include “safe,” “safe around children and pets” and “non-toxic.”

2. Claims About Product Registration

Persons who make claims regarding the use of minimum risk products should indicate that the product’s manufacturer has indicated that the product is exempt from

regulation by the U.S. EPA, in accordance with the provisions of Section 25(b)(2) of FIFRA. No direct or indirect statement may be made implying that an exempt pesticide is recommended or endorsed by any agency of the Federal Government. As an alternative to claims that could imply an endorsement of the product, EPA recommends that exempt products may bear label statements like; “this product has not been registered by the United States Environmental Protection Agency. (Manufacturer’s Name) represents that this product qualifies for exemption from registration under the Federal Insecticide, Fungicides and Rodenticide Act (FIFRA).” Similarly, persons who manufacture, install or service systems that dispense only “exempt” products may claim that “the products used in this system have not been registered by the U.S. Environmental Protection Agency. The product manufacturer has represented that the product is a minimum risk product that qualifies for exemption from registration under federal law.”

3. Environmental Benefits Claims

Environmental benefit claims may be used in conjunction with the use of an EPA exempt product, including but not limited to, “environmentally responsible,” “environmentally friendly,” “environmentally conscious,” etc.

4. Public Health Claims

Similar to conventional pesticides, companies should avoid making any claim that could lead a consumer to believe that the use of an EPA exempt product will eliminate or diminish the likelihood of contracting a mosquito-borne disease. For example, companies should avoid advertising claims like “protects your health,” “protects your family,” or “combat West Nile Virus.”

5. Use of the Term “Organic”

Though using the term “organic” to describe an exempt product may not violate EPA regulations, the term should not be used unless the product is classified as “organic” under the regulations governing the U.S. Department of Agriculture’s National Organic Program (NOP).

6. Prohibited Claims

Exempt products are subject to the same prohibitions against false and misleading statements as conventional pesticides. However, 40 CFR, Part 156.10(a)(5) does not prohibit safety claims or non-numerical comparative safety statements (all natural ingredients, etc.).

7. Advertising in States That Do Not Recognize the Federal Exemption Program

Like the federal government, some states exempt certain products from regulation. In those states, the above standards governing exempt products should apply. However, some states do not recognize the federal exemption program, in which case the standards governing conventional pesticides may apply. When advertising systems using exempt products in a state that does not recognize the federal exemption program, you should consult with the state pesticide regulatory agency prior to making health, safety or environmental claims.

Summary

Advertising claims made by persons that manufacture, install or service mosquito misting systems are governed by a variety of federal and state pesticide and consumer protection statutes, making it difficult to discern what claims may or may not be made. Compounding the situation, there is not a single definitive set of guidelines or standards. The standards set forth above are intended to provide a reliable indication of the types of claims that government agencies are likely to deem inappropriate or illegal. For additional information, you should consider contacting appropriate federal or state government agencies.

Federal Agencies

- U.S. Environmental Protection Agency
- Federal Trade Commission

State Agencies

- State consumer protection laws are enforced in most states by the state Attorney General
- State pesticide laws are enforced in most states by the state department of agriculture (In New York, Connecticut, New Jersey, they are enforced by state environmental agencies. In Texas and Arizona, these responsibilities are shared by the state department of agriculture and the state structural pest control board or commission.)

