



BERGESON & CAMPBELL, P.C.

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MEMORANDUM

Via E-Mail

DATE: May 2, 2008

TO: Firm Clients and Friends

FROM: Bergeson & Campbell, P.C.

RE: ICTA-Led Coalition Petitions for FIFRA Regulation of Nanoscale Silver Products

On May 1, 2008, the International Center for Technology Assessment (ICTA), together with 13 other consumer, health, and environmental groups, filed a petition with the U.S. Environmental Protection Agency (EPA) demanding that EPA regulate as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and that it take additional actions under FIFRA and other environmental statutes concerning, consumer products containing nanoscale silver.¹ ICTA also released an inventory of the nano silver-containing consumer products referenced in the petition.²

The petition contends that nano silver is “the most commonly used nanomaterial in consumer products and the fastest growing sector of nanomaterial commercialization,”³ and that most companies “market their nano-silver products [by] putting emphasis on the nano-silver ingredient, touting its antimicrobial and antibacterial qualities”⁴ The petition states that “research has mounted to indicate that nano-silver materials pose serious risks to human health

¹ International Center for Technology Assessment, “Citizen Petition for Rulemaking to the United States Environmental Protection Agency -- Petition for Rulemaking Requesting EPA Regulate Nano-Silver Products as Pesticides” (ICTA Petition), available at http://www.icta.org/nanoaction/doc/CTA_nano-silver%20petition_final_5_1_08.pdf.

² The inventory is available at http://www.icta.org/nanoaction/doc/CTA%20Petition%20Appendix%20A_nano-silver_product_inventory.pdf.

³ ICTA Petition at 13.

⁴ *Id.* at 15.



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and the environment.”⁵ In support of the petition, the ICTA-led coalition pointed to, *inter alia*, EPA Region 9’s recent FIFRA enforcement settlement with a California company, IOGEAR, that had been making antimicrobial claims for the nano silver coating on computer accessories it was marketing.⁶

The petition requests that EPA take the following actions:

- Clarify that nano silver and products containing it are pesticides requiring registration under FIFRA;
- Classify nanomaterial pesticides such as nano silver as new pesticides [*i.e.*, new active ingredients] that require new registrations, with nano-specific toxicity testing and risk assessment;
- Assess the potential human health and environmental risks of nano silver under FIFRA, the Food Quality Protection Act, the Endangered Species Act, and the National Environmental Policy Act;
- Take immediate action, including the issuance of Stop Sale, Use, or Removal Orders, to halt the sale of nano silver products with unapproved antimicrobial claims;
- Fully apply all FIFRA regulations in the event EPA registers any nano silver products; and
- Utilize its FIFRA authority to further review the potential human health and environmental impacts of nano silver, including undertaking either a classification review or a Special Review, amending the FIFRA regulations to require as part of a registration application the submission of nanomaterial and/or nano silver-specific data, undertaking a registration review of existing bulk silver registrations, regulating nano silver pesticide

⁵ *Id.* at 16.

⁶ *Id.* at 25-26. EPA Region 9’s press release on the IOGEAR settlement is available at <http://yosemite.epa.gov/opa/admpress.nsf/2dd7f669225439b78525735900400c31/16a190492f2f25d585257403005c2851!OpenDocument>.



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devices, and establishing a tolerance for nano silver under the Federal Food, Drug, and Cosmetic Act.

The coalition requests that EPA respond to the petition “within a reasonable time.”⁷

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We hope this information is helpful. As always, please call if you have any questions.

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ICTA Petition at 116.