

# FOCUS

A woman with blonde hair pulled back, wearing a black lace dress with a high collar and long sleeves. She is standing with her hands on her hips, looking directly at the camera. The dress has intricate lace patterns and a high slit on the side. She is wearing black high-heeled shoes.

ON FASHION RETAIL

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# Something Inside That Shoebox Really Stinks!

Open almost any shoebox and you'll see stickers, possibly on the inside of the lid. These may seem innocuous to most, but to those with an eye on potential tort liability, including those representing shoe distributors and retailers, **these could be ticking time bombs...**



This article, prepared exclusively for the readers of FOCUS ON FASHION RETAIL, will shed light on this potentially costly problem.

**E**ach year, millions of consumers, including large numbers of children, are exposed to unknown quantities of anti-mold pesticides when they open a shoebox. Although the active ingredient in these mostly unregistered anti-mold pesticides is undisclosed and the products are marketed as all natural, many stickers contain allyl isothiocyanate (AITC). These stickers have not been registered for this use, nor has this use, or the resulting exposure to consumers, been reviewed for safety by the U.S. Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or by any other regulatory agency.

It's unlikely that shoe retailers and distributors are aware of the staggering tort liability that could be hibernating in shoeboxes. Someday, millions of unsuspecting and unprotected consumers, including children, could allege they were harmed by products few ever noticed. Even more alarming is that any consumer claims of injury from exposure to an unregistered pesticidal agent cannot be subject to preemption under FIFRA Section 24(b), 7 U.S.C. § 136v(b) because the products are unregistered and have not been reviewed by EPA. This puts U.S. distributors or retailers at risk, especially if they knew that an unregistered pesticide was present in the product and failed to warn consumers.

## Potential Risks to Consumers

That consumers are routinely exposed to unknown amounts of unregistered AITC and other antimicrobial pesticides in packaged shoes and leather goods is undisputed. Foreign manufacturers rely on these unregistered pesticides and other antimicrobials to protect packaged products during transport, and their antimicrobial properties can remain effective for up to 180 days. But most packaged products containing



these pesticides can reach the U.S. in as few as 14 days. In other words, the active ingredient may still be potent when the box is opened.

The AITC used in many, if not most, of the unregistered pesticide products used in packaging imported shoes and leather goods is not registered by EPA for use in packaging, but was recently registered under FIFRA as a fumigant. And, while as of yet no studies have linked exposure to harm, there also haven't been studies that prove safety. This uncertainty should be troubling for both the tort liability implications and, more important, the possible harm to consumers, especially children.

Claims that AITC or any other unregistered and unreviewed products are "all natural" and, therefore, not harmful will provide no protection to retailers and distributors. Many "natural" chemicals -- such as arsenic -- are highly regulated and are viewed by regulators as posing significant toxicity and risk concerns. Such a claim simply will not by itself protect a company against potential tort liability.

To mitigate potential exposure to tort or other liability for harm to consumers, it makes sense to use a registered antimicrobial

that has been subject to EPA's rigorous safety testing. Such testing provides the retailer and the consumer a high degree of comfort and assurance that the antimicrobial will provide the intended product attributes and not expose the consumer -- or the retailer -- to any unintended health or commercial harm.

Finally, while this piece focuses on the dangers of pesticides in shoe and leather packaging, it also points to a larger issue in a world where much manufacturing and packaging of U.S. goods is increasingly done outside the country. How is it packaged and shipped? Who's responsible for what's in the box? At least for these stickers, distributors and retailers are, suggesting the issue -- and the larger issue of overseas packaging and distribution, is at least worth a closer look.

This article was written by Lynn L. Bergeson, Timothy D. Backstrom, and Bethami Auerbach with the law firm of Bergeson & Campbell, P.C. (B&C®) in Washington, D.C.



**Footwear, Leather Goods and Fashion**

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