



July 18, 2022

Ms. Kerri Malinowski  
Maine Department of Environmental Protection  
17 State House Station 28 Tyson Drive  
Augusta, ME 04333

**Re: Request to amend the definition of “brand name” and “manufacturer” in PFAS Concept Draft**

Dear Ms. Malinowski:

I am writing on behalf of the Society of Product Licensors Committed to Excellence (“SPLiCE”) to request an amendment to the PFAS Concept Draft in order to harmonize the definition of “manufacturer” and “brand name” to align with already successful chemical reporting laws currently in place in other states. This change would further the goal of the law to provide transparency for consumers, by requiring those entities with the most knowledge about their products to report their chemical content. We urge you to amend the draft, to exclude brand owners/trademark licensors from the definition of “brand name” responsible for compliance with the regulation.

SPLiCE is a New York-based professional association founded in 2004 with the vision to continuously improve brand licensing. Our mission is to act responsibly as a community of product licensors to share best practices for protecting, promoting, and enhancing brand integrity. Our Members comprise business, academia, military, and nonprofit sectors. SPLiCE Members represent over 40 industry sectors including aerospace, automotive, consumer products, construction, digital technology and electronics, entertainment, farming, fashion, food and beverage, footwear and apparel, health and beauty, household goods and housewares, industrial and commercial equipment, infant and juvenile products, publishing, sports/sporting goods, toys and games, transportation, and wellness.

With over 65 Member companies, SPLiCE represents approximately twenty percent of the Dow Jones Industrial Average. SPLiCE Member companies align brand equity with licensees who produce goods and services, including children’s products, for consumers worldwide. Our Member brands are widely recognized by consumers who trust the quality and integrity of their trademarks. As brand owners/trademark licensors, our Members have licensing arrangements with thousands of product manufacturers. In 2022, 88 global licensors reported the total estimated revenue of licensed merchandise and services to be \$260.8 billion USD.

Under a typical licensing arrangement, licensed merchandise is manufactured, distributed, and sold by the licensee under a license agreement that permits the licensee to use the licensor’s intellectual property (e.g., brand names, characters, logos, technology) on the licensee’s products. The licensee’s products may bear the licensor’s brand name, but the licensor does not produce, own or sell the merchandise.

As drafted, the current definition of “brand name” would impose chemical disclosure and fee obligations on manufacturers of products sold in Maine. However, the draft concept includes a broad definition of ‘brand name’ as “..means a name, symbol, word, or mark that identifies a product, and attributes the product to the owner of the brand.” This overly broad definition improperly aligns brand owners/trademark licensors, who do not manufacture, sell, or import the product, with the manufacturers and importers who actually made and introduced the product into the stream of commerce. In addition, the concept draft unduly places the burden of compliance on the entity least equipped to comply with the law – brand owners/trademark licensors who have merely licensed their brands to be affixed to licensed products.

Additionally, the draft concept defines the “manufacturer” as:

“..the person that manufactures a product, or whose **brand name** is affixed to the product. In the case of a product that is imported into the United States where the person that manufactured or assembled the product or whose **brand name** is affixed to the product does not have a presence in the United States, manufacturer includes either the importer or the first domestic distributor of the product, whichever is first to sell, offer for sale, or distribute for sale the product in the State of Maine..” (Emphasis added).

Brand owners/trademark licensors, who are not involved in the manufacturing of licensed products, are ill-equipped to provide the information required by the law. SPLICE is in the unique position to offer guidance from the perspective of those brand licensors. SPLICE is concerned that the concept draft does not consider the vast number of licensed products available to the consuming public where the brand owner/licensor was not involved in manufacturing the product and does not control the chemicals used in those products.

In order to maximize transparency and increase efficiency in obtaining accurate data about the chemical composition of children’s products, SPLICE urges you to adopt the definition of manufacturer used by other states that currently require chemical reporting. SPLICE proposes the definition in the Oregon Toxic Free Kids Act, section 431A.253(7) as a model:

“Manufacturer” means any person that produces a children’s product or an importer or domestic distributor of a children’s product. For the purposes of this subsection, “importer” means the owner of the children’s product.

Absent a clarification in the definition, brand owners/trademark licensors would have to build systems to capture detailed information regarding which products are distributed into Maine – systems that do not exist today and to which licensors have no means of determining. There would be no discernable benefit for such a system as the true manufacturer of the product is best suited to provide the disclosures required by the regulation. Moreover, this could potentially lead to duplicate obligations and reporting.

Trademark licensors ordinarily require that licensees comply with all laws in all jurisdictions where the licensed products are distributed, including state chemical disclosure laws. In states that currently have chemical disclosure laws (such as Oregon, Vermont, Washington, and California), licensors rely on their licensees to fulfill the registration and reporting obligations for their licensed products. Placing this unnecessary burden on the brand owner/trademark licensor, when that entity does not manufacture, import, or sell the product, and may have no knowledge of the manufacture, characteristics, components, or materials comprising the product, for the sole purpose of allowing those products to be sold in Maine, would be unproductive and potentially cost prohibitive. Additionally, licensors are not able to determine in which state(s) products containing their IP are distributed or sold, since license agreements grant licensees the authority to distribute licensed products by country, not specific jurisdictions within a country.

Furthermore, if the concept draft as-written moves forward, brand owners could be held liable for counterfeit products using their intellectual property. It is impractical and unreasonable to hold brand owners responsible for the chemical composition of counterfeit products simply because those products bear their brands. Indeed, brand owners have no control over those unlicensed products and often no knowledge of their existence. Brand owners spend a considerable amount of time and resources working to eliminate counterfeit products from the market. Therefore, it is illogical to expect them to spend additional resources and to legitimize those products by having to test them and report their chemical composition to the state.

SPLICE urges you to consider this amendment so that brand owners can continue to align their brands with manufacturing companies who produce safe products that will be available in other states and internationally, including to Maine consumers.

Please do not hesitate to reach out to me if you have any questions or concerns. SPLICE stands ready to be a resource for any other licensing specific questions. Feel free to contact me at [kimberly@SPLICElicensing.com](mailto:kimberly@SPLICElicensing.com) or mobile 716.698.8456.

Thank you for your consideration of our concerns.

Respectfully,

*Kimberly A. Kociencki*

Kimberly Kociencki  
Chief Executive Officer  
SPLICE