

AMERICAN SEED TRADE ASSOCIATION



MARKETING AND ADVERTISING SEED PRODUCTS JULY, 2007

DISCLAIMER

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INTRODUCTION

Since the American Seed Trade Association (ASTA) last published a paper on product representation in the marketplace¹, the depth and breadth of information available to seed customers has increased and vast changes in technology have dramatically altered how companies market and otherwise represent products. These changes are not limited to seed companies as their customers may use sophisticated tools and a wide range of information to make seed product selections. In this changing marketplace, ASTA felt it was important to update how companies typically market seed products, address how customers make decisions, and review the role of existing seed labeling laws and regulations on seed marketing and customer choice in the marketplace.

MARKETING AND ADVERTISING

Seeds today are marketed using a wide array of media forms: direct sales calls, public meetings, internet and print media, television, radio, email, word of mouth testimonials, and seed bag and tag information. Whether directed at the commercial grower or at the homeowner, seed product guides or catalogs are the most common form of detailed information on a company's seed product offerings. The catalog product listing may be limited to a picture and short description or it may provide extensive details such as resistance to insects, diseases or other environmental stresses, quality traits, area of adaptation, recommended uses and /or other virtues of the product. Some companies do provide more localized product information and customers may be able to search on line for products specific to their local area or needs.

¹ Principles of Product Representation: A Statement of Position by the American Seed Trade Association to Promote Public Trust, 1985.

The seed label, long used as a source of information for the purchaser, may be important for in-store direct consumer purchase, but may not be available until delivery to the commercial customer who selects and orders seed long before the planting season. The value of the seed label is to identify the seed brand, seller, provide information on the individual seed lot (either variety or variety not stated, quality, origin, seed treatments if any, etc...), planting recommendations and any restrictions on handling or use, and important terms and conditions of sale such as limitation of warranty and liability and use restriction as part of the contract with the purchaser. Some of the label information may not be available in the product listings or other advertising, but the purchaser can request this information from the seller prior to purchasing.

Historically, seed has been marketed and sold under different types of brand names. Brand labeling allows seed producers flexibility and visibility in the marketplace. A brand may represent a company or product line, a mixture or blend designed for a specific use, a seed product niche, variety or hybrid. A significant change in marketing is the increasing use of brands and trademarks to identify specific quality, seed trait, agronomic characteristics, product use, and specific varieties and seed treatments. The accepted practices for use of brands and trademarks vary between types of crops and intended customers, as well as between companies within a particular crop market. The U.S. Federal Seed Regulatory Branch has reaffirmed and clarified the provisions allowing use of brand names in advertising and labeling with the following statements:²

- A brand designation is generally used to identify the owner or seller of the seed.
- If brand designations are used, they should be clearly identified as such when part of a seed label to avoid being misleading.
- When advertising seed by a brand name, the brand name must be clearly identified as such.

Additionally the Association of American Seed Control Officials provided further advice on use of brand name on the seed label.³

² “Brand Names And Seed product Names – Labeling And Advertising”, Items of Interest in Seed, April 2007.
<http://www.ams.usda.gov/lsg/seed/LSioiApril2007.pdf>

³ “What’s In A Name Varieties & Brands – Understanding the Seed label!” Sept, 2006.
http://www.seedcontrol.org/seed_product_labeling_brochure.pdf

HOW SEED CUSTOMERS MAKE DECISIONS

Today, the amount of information known and easily accessible about a seed product once it has gone from breeding to final product can be quite extensive versus years in the past. Seed customers range from sophisticated growers producing products for commercial markets to homeowners filling in a bare spot in their lawn. While both may use a wide variety of information prior to seed selection, it is also likely that the latter may simply choose the seed product off the shelf of the local distributor.

Seed customers make seed selections based on numerous factors – their decision is often driven by their own or someone else’s previous results with a company or seed product. Many growers use a number of different varieties to fit their cropping patterns and to evaluate new products. . Often, a grower’s number one reason to select a new product is return on investment. Other reasons growers try new seed products include:

- testing of a new product with different agronomic characteristics,
- evaluation of disease resistance,
- response to recommendations and information from companies and distributors,
- end-use value to the grower, or
- consumer’s demand for a particular product.

Seed customers do not commonly track the genetic parentage or plant breeding backgrounds of seed products as the products change within a 3-5 year cycle in many crops. Given the rapid turnover, it would be difficult to keep up on this myriad information for the several hundreds of products available.

Thus, seed customers rely on a wide variety of product information, including their own experiences or experiences that others have had with particular seed products or companies, to make decisions on their seed products.

THE ROLE OF SEED LAW AND REGULATIONS IN SEED MARKETING AND CUSTOMER CHOICE

Seed labeling in the U.S. is governed by a combination of federal and state seed laws and regulations. The Federal Seed Act establishes labeling requirements for seed shipped in interstate commerce. Seed companies can put additional information on the seed label so long as the label satisfies applicable federal and state regulatory requirements and the information is neither false nor misleading. The ASTA member commitment to compliance with federal and state seed law is reflected in the ASTA by-laws: “members of the Association shall sustain and advance the integrity, honor, and prestige of the Association by complying with applicable federal and state laws and regulations governing labeling of seed and representations as to seed quality.” For more specific information on seed labeling regulations, please see ASTA publication ‘Seed Purity – Understanding Label Information and Industry Practices’.⁴

Seed production and marketing has become increasingly global. Seed produced in one or more states or countries by the same company is often distributed in interstate and even foreign commerce. Seed distributed in interstate commerce must comply with labeling requirements, testing regimes and applicable standards established by or in accordance with the Federal Seed Act and other federal and state laws. Uniformity in labeling is increasingly important and is necessary to ensure proper use of seed by commercial customers and consumers, and also to enable efficient production and distribution. Uniformity would also ensure that those who purchase seed have access to many varieties and types of seed. The state regulators recommend a uniform system among states and provide guidance in the form of “Recommended Uniform State Seed Law” (RUSSL)⁵. Currently, some inconsistencies between states make interstate commerce difficult. Federal preemption would facilitate uniform, effective, and efficient national regulation of seed. ASTA supports uniformity and believes that preemption would benefit government regulatory officials, customers and consumers. In the absence of preemption, ASTA encourages individual states to use RUSSL and the Federal Seed Act and regulations to ensure a fair, flexible and consistent system that facilitates interstate commerce.

⁴ <http://www.amseed.org/newsDetail.asp?id=118>

⁵ <http://www.seedcontrol.org/russl.pdf>

The Federal Seed Act and regulations do not require that all crop seeds be labeled as to variety name. For specific crop kinds if the variety name is not used, “variety not stated” must be on the seed label. For any seed product that has been protected under the 1994 revisions of the Plant Variety Protection Act, the variety name must be used. However, in some markets, such as some lawn seed or seed used for soil stabilization, cover crops, or wildlife habitat, variety name may not be as important to the seed customer. In other cases, the official names of some older varieties may not be known or cannot be guaranteed. Lawmakers and regulators in many states understand the importance of these options to sell seeds as “variety not stated” and have maintained alignment with the Federal provisions. However, some states have placed additional restrictions on some or all crop kinds. ASTA supports the use of “variety not stated” as it provides needed flexibility in the marketplace enabling companies to make reasonable cost effective production plans and gives customers choices in seed companies and products that fit their needs at a reasonable price. For the reasons cited above, ASTA recommends that such restrictions should be harmonized with the Federal Seed Act and regulations.

INTELLECTUAL PROPERTY RIGHT IMPACT ON LABELING:

Patents, PVP, trademarks and contractual agreements can all be part of the value of the purchased seed. The rights and obligations a customer has when they purchase and use the seed should be clearly conveyed to the customer and companies may use a variety of formats including the seed label to accomplish this.

ASTA encourages worldwide adoption of more effective intellectual property protection in all its various forms. Stronger and more comprehensive intellectual property protection systems globally will result in increased investment in seed research, support the conservation and use of genetic resources, facilitate benefit sharing and will encourage continued development of new and improved crops that will benefit the public.

CONCLUSIONS

ASTA reaffirms its basic beliefs as outlined in 1985:

- Product labeling shall be truthful
- Labeling requirements must be flexible to permit customers to purchase products of their choice at reasonable cost
- Labeling requirements must not impede introduction of new varieties into the market, and
- Labeling requirements must not require breeders and developers of new products to divulge proprietary trade secrets.

Since that time, the depth and breadth of information available to seed customers has increased and vast changes in information technologies have dramatically altered how companies market their products to potential customers.

In turn, customers may use sophisticated tools and a wide range of information to make seed product selections. Given the ever changing and varied marketplace, it is essential to maintain a fair and flexible system that meets the needs of seed companies and their customers.