



SUPPLIER PRODUCT SAFETY and SOCIAL RESPONSIBILITY: A FRAMEWORK for 2010

With increasing frequency, customers of advertising product suppliers are seeking assurances about many legitimate concerns, most of which fall into three categories: product safety, indemnity for liability and social responsibility on issues ranging from employment to the environment. The business benefits of addressing these concerns are obvious, but some customers (and their lawyers) command more than an appropriate level of action, expense and responsibility on the part of the supplier. How does a supplier determine an appropriate response?

As an organization with the mission of promoting the interests of advertising product suppliers, APS proposes a framework for creating a suitable response to customer requests. The framework recognizes that the customer's *concern* is entirely appropriate, but responding to the customer's *form* is often problematic: such forms typically are "one-size-fits-all" and not suitable for the supplier's business; they may create unnecessary paperwork and be expensive to maintain; and they may demand more than what is fair and reasonable in the typical customer/supplier relationship.

APS also proposes a practical form for use by suppliers that implements the framework outlined below. *Please be advised that in no event should the information or form be implemented without the advice of counsel.*

FRAMEWORK: What is reasonable?

Product Safety

For the responsible supplier, compliance with product safety laws are a given, so providing customers a reasonable assurance of the same is appropriate, and it can be done very simply and cost-effectively. In most cases, extensive "shotgun" forms requiring specific test dates, labeling, recall tracking and other concerns that may not apply to the supplier's product or business are time-consuming, costly to complete and manage—and *there is no real additional value to the customer*. While specific relationships, circumstances and products might warrant a detailed response, **a fair, succinct certification of supplier compliance with all applicable laws and regulations provides the customer with what is essential without being burdensome**. Of course, in order for any certification to be effective, the supplier must keep entirely up-to-date on applicable requirements.

Indemnity

Indemnity may be sought for many different types of claims, from breach of contract to product liability (akin to product safety but a matter of state law and usually based on product defects). While some relationships or products may justify an indemnity, such is usually not the case with the typical advertising products customer/supplier relationship.* *For the most part, customer reliance on an indemnity is misplaced: **it is far more important that the supplier have sufficient insurance***. Since a responsible supplier carries adequate insurance (general liability insurance and, where appropriate, separate product liability insurance), it is reasonable to certify the same and provide a certificate of insurance. Many customers also request being named an additional insured, often under the mistaken impression that it relieves their own responsibility to be properly insured. Such action is more appropriate where the supplier works on premises or provides a pivotal product or service (usually not the case with advertising products).

*Seek the advice of counsel as to whether an indemnity agreement is advisable. Click on the following link for a sample agreement to discuss with counsel:
<http://www.apstoday.com/sampleindemfinal112309.pdf>

Social Responsibility

Social responsibility encompasses many concepts but most often focuses on employment and the environment. Because US suppliers are already subject to federal and state laws, certifying as to legal requirements poses no additional liability. In fact, it may be a solid marketing move to call attention to good business practices with more than a short, simple certification, especially if the supplier's business practices exceed legal requirements.

PRACTICAL APPLICATION

Customer concerns about product safety and sound business practices are legitimate, but the "shotgun" trend in customer forms often creates unnecessary paperwork and drives up costs. Of course, no certification has value unless the supplier stays entirely up-to-date on applicable legal requirements and any higher standards elected, but in most cases, the essence of the customer's concerns can be met fairly and effectively with a simple certification.

The official Advertising Product Supplier Product Safety and Social Responsibility Policy [\[pdf link\]](#) incorporates the above framework. It provides certification that

- a. the supplier's products are in compliance with applicable product safety laws;
- b. the supplier carries sufficient insurance for general business and product liability purposes; and
- c. the supplier complies with social responsibility standards (stated in more detail).

The Policy is intended as a comprehensive but efficient response in lieu of completing a customer's form. Of course, each supplier is encouraged to append additional standards with which it has elected to comply. APS suggests that use of the form by as many suppliers as possible will help the practice to be recognized in the industry as a meaningful standard valuable to customers and suppliers alike.