

February 16, 2022

House Environment and Transportation Committee  
Room 251  
House Office Building  
Annapolis, MD 21401  
(Submitted Electronically)

Dear Committee members:

We applaud the focus on recyclability labeling and reducing consumer confusion with the introduction of HB700. There is growing recognition in states across the U.S. that current use of the Resin Identification Code (RIC) may contribute to confusion about what plastic packaging is recyclable in curbside programs. While there is general consensus that change needs to occur with plastic package labeling, there is yet clear direction on *how* to improve labeling.

Discussions about the best approach for “truth in labeling” are just beginning in places like Oregon, and soon California. These stakeholder groups are convening to discuss not only the messaging consumers see, but also how that information can be best communicated. These stakeholders could determine best practices are to move away from the RIC entirely, or they may determine the RIC has a utility to the system. Resin identification could continue to be a mark embossed on the bottle, evolve to being directly printed on a label or perhaps even conveyed through the use of a digital label or link, such as digital watermarking.

We believe it would be beneficial for HB700 to be amended so the bill language offers flexibility to accommodate the range of labeling innovation actively being considered. Effective use of labeling innovations, such as digital watermarks, bypasses the need for a resin code at all, the issue at the heart of HB700.

*About our company*

Digimarc is a pioneer and world leader in digital watermarking. We are a publicly listed company on the NASDAQ exchange (DMRC) and based in Oregon since 1995.

The average person experiences Digimarc every day, many times we suspect. Our largest customer group is a consortium of world central banks, where we provide a trusted means of deterring the counterfeiting of currencies. Our labeling technology is also included in most states drivers licenses as a means of authentication, and we have translated this powerful labeling technology to packaging.

Our technology enables packaging manufacturers to create a digital identifier (watermark) in any type of printed label, package or plastic container. This digital identifier cannot be seen or

discerned by consumers, but it can be detected by devices such as smartphones, front of store scanners, or sorting equipment used by recyclers.

#### *Labeling innovation on the horizon*

Digital watermarking technology has the potential to give plastics and other packaging a “digital recycling passport.” In essence, it can turn packaging into an *Internet of Things* objects, linked to virtually unlimited information that can be used to better enable recycling – from the consumer through to the plastics recycler.

The consumer and system benefits are many. By scanning the package with a smartphone, consumers can be informed of how to properly dispose of the item even based on their specific geo-location and waste collection provider. In short with digital watermarking, residents of Maryland could point their phone at a packaging item and be told if it falls within the list of accepted items in a community program.

Once in the recycle system, a package with digital watermarking can provide many pieces of important information, including resin type, food contact v. non-food contact, levels of recycled content, and other resin properties such as melt flow and additives. The ability to better sort plastics for recycling creates more value across the system and ensures plastic packaging continues to be used for their highest and best secondary use.

While this technology is new in the U.S. for the purposes of recycling, digital watermarking is already leading the way for recycling in Europe. The potential of digital watermarking is being developed across Europe through the [Holy Grail 2.0](#) initiative, a consortium of more than 180 global brands and product stewardship organizations and with support of the Ellen MacArthur Foundation. The European Commission has published notification of digital watermarking even as a potential requirement for all packaging.

And in the U.S., there is already federal precedence for use of digital watermarking as an acceptable labeling method, specifically called out in the Federal Register for GMO labeling.

#### *Labeling approach in HB700*

Because best practices for “truth in labeling” have yet to be defined, we are concerned that the definition of “label” and prescribed labeling method in HB700 is too narrow to sufficiently accommodate labeling innovation. Here are two examples of sections that would limit labeling innovations.

*Section 1 (a) (3) “Label means a molded, imprinted, or raised symbol located on or near the bottom of a container.”*

As “truth in labeling” exploration get underway, it may be determined it is best to eliminate in-mold labels on containers and rather put information on a printed label. The current language of HB700 leaves no room for innovation in labeling methods.

*Section 1 (c) (1) “The label required under subsection (b) of this section shall:*

- (i) Appear on or near the bottom of the container; AND*
- (ii) Be clearly visible*
- (iii) Consist of:*

1. A number placed within 3 arrows forming a triangle as described in paragraph (2) of this subsection; and
  2. Letters placed below the triangle of arrows.
- (2) (i) The 3 arrows shall form an equilateral triangle with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius.
- (ii) The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow.
- (iii) The triangle formed by the 3 arrows curved at their midpoints shall depict a clockwise path around the code number.

One outcome of the “truth in labeling” stakeholder efforts could be a revision to the ASTM D7611 RIC standard, or elimination of the standard. By codifying the current design elements of D7611 in statute, there is a risk that the standard and the law become inconsistent over time. Brands compliant with the standard might find themselves out of compliance with Maryland state law, and vice versa.

We suggest HB700 be amended with language that allows for a wider range of labeling approaches, or is not prescriptive of labeling practices at all and grants rule making authority to the appropriate state agency to define labeling methods. This would allow Maryland to adopt the best practices that are actively being explored in the “truth in labeling” discussions taking place, while also ensuring there is sufficient space for future innovations.

If the Committee moves forward with the current language in HB700, it runs the risk of having to update the statute once labeling best practices are identified and widely adopted in other states.

We hope the House Committee members will adopt language for HB700 that ensures Maryland can easily employ the best practices in labeling as they are identified in the coming months. If the members of this Committee have any additional questions about how digital watermarking technology can enabling recycling, we would be happy to provide additional information.

Sincerely,



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ESG Engagement & Corporate Communications  
Digimarc Corp.