



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

JUL 25 2012

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ted Wolff  
Manatt, Phelps & Phillips, LLP  
7 Times Square  
New York, NY 10036

Re: *In the Matter of HOMEIT, LLC dba Euroflex Americas,*  
Docket No. FIFRA-02-2012-5207

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 JUL 25 P 2:53  
REGIONAL HEARING  
CLERK

Dear Mr. Wolff:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer of the U.S. Environmental Protection Agency - Region 2.

Please note the payment provisions of the Agreement. Please arrange for payment of the penalty according to the instructions given in the Final Order.

Sincerely,

Naomi P. Shapiro  
Assistant Regional Counsel

cc: Director, Pesticides Management Bureau  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233

Enclosures

1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

In the Matter of

HOMEIT, LLC dba Euroflex  
Americas,  
Respondent.

Proceeding under the Federal  
Insecticide, Fungicide and Rodenticide  
Act, as amended.

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. FIFRA-02-2012-5207

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 JUL 25 P 2:53  
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**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136l(a) (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter "CROP"). Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3). Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

**EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is HOMEIT, LLC dba Euroflex Americas.
2. Respondent is located at 48 Wall Street, Suite 1100, New York, NY 10005.
3. Respondent is a "person" as that term is defined in FIFRA Section 2(s), 7 U.S.C. Section 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.
4. Section 2(u) of FIFRA, 7 U.S.C. Section 136(u), defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
5. Section 2(t) of FIFRA, 7 U.S.C. Section 136(t), defines a "pest" as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism.
6. Forty C.F.R. § 152.3 defines "[p]esticide product" as "a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide."
7. Respondent imports and distributes home products.
8. Among Respondent's products are the "Monster" and "Jet" line of floor, carpet and general purpose steam cleaners, including the "Monster 1200 System" and "Steam Jet II."
9. Respondent packages some of the Monster and Jet products with "24 Clean Blast" (EPA Reg. No. 82972-1-84641) ("Clean Blast"), a registered pesticide.

10. Respondent, through its packaging, directions for use, and promotional materials for the Monster and Jet product lines, claims that consumers can use Clean Blast in its steam cleaners to “disinfect” and “sanitize,” and also claims that consumers can use the steam cleaners from the Monster and Jet product lines to “disinfect” and kill germs and bacteria.

11. Clean Blast is not registered for use in steam delivery devices.

12. On or about December 22, 2009, an EPA inspector conducted an inspection of and at the Bed, Bath & Beyond store located in Iselin, New Jersey.

13. At the time of the December 22, 2009 inspection, the EPA inspector identified packages of the Monster 1200 System offered for sale.

14. The labels on the packages of the Monster 1200 System viewed by the EPA inspector included pesticidal claims, specifically “disinfects” and “kills 99.9%” and “kills germs, bacteria, mold, and other harmful organisms.”

15. The labels on the packages of the Monster 1200 System viewed by the EPA inspector included a picture of a container of Clean Blast and claims to “disinfect when using the Clean Blast feature.”

16. On May 27, 2010, EPA – Region 2 sought information from Respondent pursuant to Sections 8 and 9 of FIFRA, requesting information and records regarding the sale or distribution of the Monster 1200 System to Bed, Bath & Beyond during the period January 1, 2009 – May 15, 2010.

17. “To distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg), as “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for

shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”

18. On or about June 18 and June 25, 2010, Respondent provided a response to the May 27, 2010 information request documenting numerous sales or distributions of the Monster 1200 System with Clean Blast to Bed, Bath & Beyond and other retailers.

19. Respondent “distribute[s] or sell[s]” pesticides within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).

20. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), provides it shall be unlawful for any person to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of its registration.

21. Each of Respondent’s sales or distributions of Clean Blast, described in Paragraph 18, above, constitutes an unlawful act under Section 12(a)(1)(B) of FIFRA, 7 U.S.C. Section 136j(a)(1)(B).

22. Upon notification that its products were distributed in violation of FIFRA, Respondent worked quickly to recall all of both the Monster and Jet lines of steam cleaners packaged with Clean Blast from distribution.

23. On August 17, 2010 and November 22, 2011, the parties met to discuss settlement.

### **CONSENT AGREEMENT**

*In the Matter of HOMEIT, LLC dba Euroflex Americas, FIFRA-02-2012-5207*

Based upon the foregoing, and pursuant to Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18, it is hereby agreed that:

1. Respondent shall hereafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. Section 136 et seq., and its implementing regulations.
2. Respondent's signatory certifies on behalf of the Respondent that as of the effective date of this Consent Agreement it no longer produces or distributes any products packaged with or promoted for use with a pesticide.
3. Respondent further certifies that, to the best of its knowledge, none of its Monster or Jet lines of steam cleaning products, packaged with Clean Blast, continues to be offered for sale by its direct customers, including Bed, Bath & Beyond.
4. Respondent further certifies that it is fully aware of the statutory provisions of FIFRA, as amended, 7 U.S.C. Section 136 et seq., and its implementing regulations. Should Respondent resume or initiate sales or distribution of a steam cleaning product packaged with a pesticide, such sales or distribution will be made only in compliance with FIFRA and its implementing regulations.
5. If in the future EPA believes that any information certified to in paragraphs 2, 3 or 4, above, of this Consent Agreement, is untrue or inaccurate, EPA will so advise the Respondent of its belief and basis, and will afford the Respondent thirty (30) days to submit comments to EPA or correct any alleged untrue or inaccurate certification. If, after

consideration of Respondent's reply, the Complainant determines that the certification(s) is untrue or inaccurate, Respondent shall be liable to EPA for a stipulated penalty of \$25,000 for each certification that EPA determines was untrue or inaccurate. EPA may also initiate a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law.

6. Respondent shall pay, by cashier's or certified check, or by electronic fund transfer, a civil penalty in the amount of One Thousand Dollars (\$1,000) in settlement of this case on or before forty-five (45) days after the date of signature of the Final Order at the end of this document.

7. Payment must be received at the address listed in Paragraph 8, below, or the EFT must be received by the Federal Reserve Bank of New York, on or before the due date specified above (the date by which payment must be received shall hereafter be referred to as the "due date").

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if the payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30)

day period (or any portion thereof) following the due date in which the balance remains unpaid.

- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of its due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.
- d. Pursuant to 40 C.F.R. Section 22.31(b), the effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.

8. If payment is made by cashier's or certified check, such payment shall be payable to the "Treasurer, United States of America." The check shall be identified with the notation of the name and docket number of this case as follows: In the Matter of HOMEIT, LLC dba Euroflex Americas, Docket No. FIFRA-02-2012-5207.

Each such check shall be mailed to:

United States Environmental Protection Agency  
Fines & Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

If Respondent chooses to pay by electronic fund transfer ("EFT"), Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address:

*In the Matter of HOMEIT, LLC dba Euroflex Americas, FIFRA-02-2012-5207*



FRNYUS33  
 33 Liberty Street  
 New York, N.Y. 10045

- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: HOMEIT LLC dba Euroflex Americas
- g. Case Docket Number: FIFRA-02-2012-5207

Respondent shall also send proof of each payment, whether by check or EFT, to:

Naomi Shapiro  
 Assistant Regional Counsel  
 Office of Regional Counsel

and

Office of the Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 2  
 290 Broadway, 16<sup>th</sup> Floor  
 New York, N.Y. 10007-1866;

9. All stipulated penalties are due and payable within forty-five (45) calendar days of Respondent's receipt from EPA of a written demand for payment. All stipulated penalty payments shall be made in accordance with the payment instructions in paragraph 8, above. Penalties shall accrue as provided below regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this CA/FO. Nothing in this CA/FO, including payment of penalties identified in this CA/FO, shall preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law.

*In the Matter of HOMEIT, LLC dba Euroflex Americas, FIFRA-02-2012-5207*

Failure to pay any stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection and/or appropriate action.

10. The Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this CA/FO if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in further action by EPA.

11. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

12. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent admits (a) that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. Section 136l(a), to commence a civil administrative proceeding for the

allegations in the EPA Findings of Fact and Conclusions of Law section above; and (b) admits the facts stipulated herein.

13. The civil penalty and any applicable stipulated penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, state or local law.

14. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty herein, and the accuracy of the Respondent's certifications in this proceeding) the civil and administrative claims alleged in this Consent Agreement. Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

15. Respondent explicitly and knowingly consents to the assessment of the civil penalty and any applicable stipulated penalties as set forth in this Consent Agreement and agrees to pay the civil penalty and any applicable stipulated penalties in accordance with the terms of this Consent Agreement.

16. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

17. The Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO, or b) to enforce a judgment relating to this CA/FO.

18. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.

19. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.

20. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

21. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

22. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.

23. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and Final Order and all the terms and conditions set forth in this Consent Agreement and Final Order.

24. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, its officers/officials, agents, authorized representatives and successors or assigns.

25. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

26. Each party hereto agrees to bear its own costs and fees in this matter.

27. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**In the Matter of HOMEIT, LLC dba Euroflex Americas, FIFRA-02-2012-5207**

RESPONDENT: HOMEIT, LLC dba Euroflex Americas

BY: Stojan Dragovich  
(Signature)

NAME: STOJAN DRAGOVICH  
(Please Print)

TITLE: PRESIDENT

DATE: June 25, 2012

COMPLAINANT:

Dore F. LaPosta

Dore F. LaPosta, Director  
Division of Enforcement  
and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2

DATE: JULY 11, 2012

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



Helen S. Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 26<sup>th</sup> Floor  
New York, New York 10007

DATE: July 24, 2012

## CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

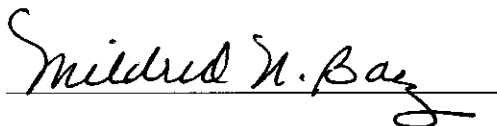
Original and Copy  
By Hand Delivery:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

Copy by Certified Mail/  
Return Receipt Requested:

Benjamin E. Wolff III  
Manatt, Phelps & Phillips, LLP  
7 Times Square  
New York, NY 10036

Dated: 7/25, 2012  
New York, New York

  
Mildred N. Bay