

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
American Consumer Products Corporation,)
Respondent.)

Docket No. FIFIA-04-2009-3023

HEARING ROOM

2010 JUN -7 PM 2:26

EPA REGION 10

Respondent's Initial Pre-Hearing Exchange

NOW COMES the Respondent, American Consumer Products Corporation (herein known as "ACP") by Robin Zahran, its president, and in response to the Honorable Judge Susan L. Biro's pre-hearing exchange order, respond as follows:

-A- Witnesses

- 1. Expert witnesses, No expert witnesses in behalf of the respondent will be called.
2. Fact Witnesses:
a. Robin Zahran will testify that there was no pesticide used in the Product 24/7, and that the issue of dispute is the mislabeling of the product by U.S.A. Lab that filed for bankruptcy and the usage of its labels by an accident by an employee.
b. Gerald Toyo will testify as to how the label was placed on the bottles by error by an employee by mistake and that no pesticide was used in the preparation of that product.
c. Jeff White will testify that no pesticide was used in preparation of the 24/7 product and that an error of labeling occurred.

-B-

Copies of All Exhibits Intended to be Introduced as Evidence

The Respondent will utilize Complainant's exhibits as marked and attached to its disclosure, in particular, Exhibits 2,3,4,5,6,7,8,9,10, and 11.

-C-

Statement of the Appropriate Place of Hearing

The Respondent believes that Atlanta, GA will be the appropriate place for the hearing because of the convenience to all witnesses.

-3-

A

The Complainant abandoned its claim against ACP of Illinois and is pursuing its claim against ACP of Georgia.

B

Paragraph 11 and paragraph 12 of the answer by the respondent to EPA's Amended Complaint stressed and plead no first-hand knowledge of Complainant's allegations. The respondent will utilize the documents and exhibits submitted by the Complainant for its proofs.

On the other-hand, the Respondent denies that it produced or distributed "anti-bacterial" 24/7 formula whatsoever and will utilize the witnesses' testimony, along with the exhibits for proof.

C.

The Respondent did not manufacture or distribute anti-bacterial formula 24/7 at anytime and states that the mislabeled 24/7 bottles didn't contain any anti-bacterial products whatsoever.

D.

The Respondent will utilize all of Complainant's exhibits of U.S.A. Lab 24/7 product and ACP's labels for the 24/7 products along with the testimony of witnesses of both sides.

E.

(a) Respondents' witnesses will testify to the fact of the destruction of all the USA labels immediately after the incident was brought to their attention, along with all the filled mislabeled bottles.

(b) The Complainant's witnesses will testify that the product was removed from Variety Stores immediately and was not observed or seen after the initial observations. The Respondent will utilize Complainant's exhibits and testimony to prove the affirmative defense # 3.

F.

The anti-bacterial formula distributed did not contain any anti-bacterial chemicals whatsoever, nor was ACP products licensed to purchase anti-bacterial products, nor did it purchase any anti-bacterial products at any time. The Respondent will utilize the witnesses' testimony and exhibits to support its affirmative defense # 4.

G.

No letter warning to cease was given to Respondent by Complainant at anytime prior to this time of incident. The Respondent took the action voluntarily and immediately upon being notified by Variety Wholesale of the mislabeling and immediately destroyed the labels and removed the mislabeled products from Variety Wholesale and from the manufacturing facility.

H.

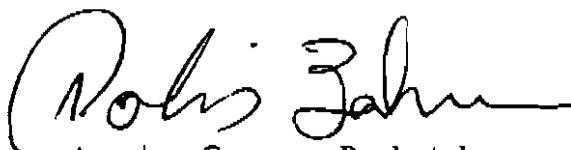
The Respondent will show that:

- a) ACP is unable to pay any amount of penalty and will offer testimony about its insolvency by Robin Zahran, its president and,
- b) will show that ACP have negative assets and practically ceased to do business and manufacturing as of the year 2009. See assets sheet.

I.

The penalty proposed should be eliminated because it was not earned based on the Affirmative Defenses stated above and ACP's immediate action and the fact there was no harm to people or the environment.

Respectfully submitted,



American Consumer Products by
Robin Zahran, its president

6/4/2010

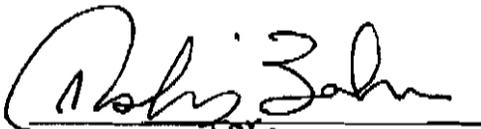
CERTIFICATE OF SERVICE

I, Robin Zahran, certify that the foregoing Respondent's Initial Pre-hearing Exchange response, dated, June 4, 2010, was sent this day to the following service list below by U.S. First Class Postage and facsimile in Oakbrook, IL, 60523.

Service List:

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Patrick Bullock
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Robin Zahran, Respondent
American Consumer Products
1301 W. 22nd Street
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Oak Brook, IL 60523
630-573-1000
630-574-8444 (fax)

To Honorable Judge Susan Piro

ATTN: Jennifer Lewis
Patrick Bullock

I just got the order of
Judge Susan Piro yesterday in
the mail, may be we should text
or email to avoid delays.

Thank you very much in
advance.

Robin Zahran

States
Federal Protection Agency
Washington, DC 20460

Use \$300



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\$00.610

04/29/2010

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ORIGINAL ADDRESSEE FOR REVIEW

PH 1-888-01847-29-43

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