

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Docket No. FIFRA-07-2009-0042
)
Custom Compounders, Inc.)
Advanced Products Technology, Inc.) RESPONSE TO COMPLAINANT'S
Keith G. Kastendieck and) MOTION FOR PARTIAL ACCELERATED
Karlán C. Kastendieck,) DECISION ON LIABILITY
)
)
Respondents.)

**ADVANCED PRODUCTS TECHNOLOGY, INC.'S RESPONSE TO COMPLAINANT'S
MOTION FOR PARTIAL ACCELERATED DECISION ON LIABILITY**

COMES NOW Corporate Respondent Advanced Products Technology, Inc. (hereinafter, "APT") and responds to Complainant's Motion for Partial Accelerated Decision on Liability as follows:

1. Complainant's instant Motion was filed on September 1, 2010.
2. This Court entered its Order on Complainant's Motions for Default on August 25, 2010.
3. Due to Respondents' counsel's move of their offices, both the Complainant's instant Motion and the Court's Order of August 25, 2010 were received on September 2, 2010 at their new location.
4. APT believes the Court's finding in its Order of August 25, 2010 resolves the Complainant's Motion now at issue.
5. This Court held, "Still, Corporate Respondents offer a unified and coherent defense common to all consolidated cases, namely that it disputes the registration status of the pesticides

identified in each complaint. Accordingly, because Corporate Respondents have uniformly denied this element and the Amended Complaints do not enhance Complainant's prima facie case, Corporate Respondents may fairly be treated as having substantially answered the underlying allegations."

6. Corporate Respondent Custom Compounders, Inc. ("Custom Compounders") brought the erroneous allegation to the attention of the Complainant when it filed its initial answer stating that the invoices in question were not Custom Compounders' invoices.

Moreover, Corporate Respondents provided the actual invoices in their Initial Prehearing Exchange (Invoice Nos. 22129, 22329, 22361 and 22395).

Nevertheless, Complainant, in its Amended Complaint, charges both Custom Compounders and APT with these sales and distributions.

Individual Respondents Keith G. Kastendieck ("Keith") and Karlan C. Kastendieck ("Karlan") have simply been honest and tried to say the same thing Custom Compounders did in the first place - the invoices are APT invoices, not Custom Compounders invoices.

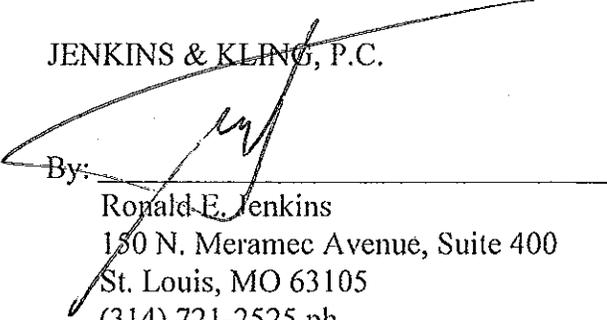
7. All of this, however, is academic. As the Court noted in its latest Order, the Respondents have presented a unified and coherent defense common to all the consolidated cases - i.e. they dispute the registration status of the pesticides. All of the Respondents (Corporate and Individual) in all of their answers have denied this essential element.

Mark Leshner's Affidavit dated August 9, 2010, when he has already been listed as a trial witness for Complainant, does not enhance the Complainant's position that there is "no genuine issue of material fact" as to this part of the proceeding.

WHEREFORE, Corporate Respondent Advanced Products Technology, Inc. humbly suggests this Motion should be denied for reasons stated by this Court in its August 25, 2010 Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via Federal Express upon:

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this 3rd day of September, 2010.

