

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: ) DOCKET NO. FIFRA-10-2021-0067  
)  
KALIBER GLOBAL, LLC, ) **CONSENT AGREEMENT**  
)  
Bellevue, Washington, )  
)  
Respondent. )  
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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Kaliber Global, LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

**II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA,

7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

### **III. ALLEGATIONS**

#### **A. STATUTORY AND REGULATORY BACKGROUND**

3.1. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), provides that it shall be unlawful for any person in any State to distribute or sell to any person any device which is misbranded.

3.2. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

3.3. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” 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.

3.4. The regulation at 40 C.F.R. § 152.3 further defines “distribute or sell” and other grammatical variations of the term such as “distributed or sold” and “distribution or sale,” as the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.

3.5. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), and the regulation at 40 C.F.R. § 152.500(a) define “device” as any instrument or contrivance (other than a firearm) which is

intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganisms on or in living man or other living animals).

3.6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” as, *inter alia*, any insect, rodent, nematode, fungus, or weed.

3.7. The regulation at 40 C.F.R. § 167.3 defines “pesticidal product” as a pesticide, active ingredient, or device.

3.8. The regulation at 40 C.F.R. § 152.500(b)(1) states that a device is subject to the requirements set forth in Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1).

3.9. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), provides that a pesticide is misbranded if its label does not bear the registration number assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which it was produced.

3.10. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), provides that the term “label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

3.11. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines “establishment” as any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.

3.12. The regulation at 40 C.F.R. § 167.3 further defines “establishment” as any site where a pesticidal product, active ingredient, or device is produced, regardless of whether such site is independently owned or operated, and regardless of whether such site is domestic and producing a pesticidal product for export only, or whether the site is foreign and producing any pesticidal product for import into the United States.

3.13. The regulation at 40 C.F.R. § 152.500(b)(2) states that a device is subject to the requirements set forth in Section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. part 167.

3.14. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), provides that no person shall produce any pesticide subject to this subchapter in any State unless the establishment in which it is produced is registered with the Administrator.

3.15. The regulation at 40 C.F.R. § 167.20(a) provides that any establishment where a pesticidal product is produced must be registered with the Agency.

3.16. The regulation at 40 C.F.R. § 167.20(a)(3) provides that any foreign establishment producing a pesticidal product for import into the United States must be registered.

## **B. GENERAL ALLEGATIONS**

3.17. Respondent is a limited liability corporation, incorporated and with its principal place of business in Washington. Respondent is therefore a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.18. At all times relevant to the allegations set forth herein, respondent utilized the Amazon.com marketplace and its own website, www.shoplivinwell.com, to distribute and sell various products through its brand, Livin’ Well.

3.19. On September 26, 2018 and October 23, 2018, EPA Region 10 Inspectors (“Inspectors”) inspected the Respondent’s facility at 1309 120th Avenue in Bellevue, Washington (“Facility”).

3.20. During the October 23, 2018 inspection, Inspectors observed and reviewed four of the products that Respondent sells: “Insect Zapper,” “Sonic Mole Repeller,” “Sonic Pest Repeller,” and “Sonic Mole Repeller with LED” (collectively “Violative Products”).

3.21. The Violative Products are all instruments intended for repelling or mitigating pests, and as such are “devices” as that term is defined in Section 2(h) of FIFRA, 7 U.S.C. § 136(h), and 40 C.F.R. § 152.500(a); specifically,

- a. the product’s names—Sonic Mole Repeller, Sonic Mole Repeller with LED, and Sonic Pest Repeller—indicate that they are intended for repelling “pests,” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t);
- b. the product description for Sonic Mole Repeller and Sonic Mole Repeller with LED provides that those products repel voles, moles, gophers, snakes, and other pests;
- c. the product description for Sonic Pest Repeller provides that it repels pests and rodents and keeps bugs, mice, cockroaches, rodents, spiders, ants, and rats away from your home for good; and
- d. The animals and insects listed on the Violative Product labels are all “pests” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

3.22. Therefore, the Violative Products are all “pesticidal products” as that term is defined in 40 C.F.R. § 167.3.

3.23. At all times relevant to the allegations set forth herein, the Violative Products were all produced by Aosion, an entity based in China. Therefore, Aosion met the definition of “establishment” as that term is defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and was required to be registered with the Administrator, pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. §§ 167.20(a) and 167.20(a)(3).

3.24. At no time prior to October 20, 2020, was Aosion registered as a foreign establishment pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20(a)(3). Aosion's current EPA Establishment Number is 98826-CHN-1.

3.25. During the October 23, 2018 inspection, Respondent provided EPA Region 10 Inspectors with copies of its sale and inventory records.

3.26. On Respondent's inventory records, Respondent identified which of its products were produced in a facility that did not have an EPA foreign establishment number by including such products in a column entitled "No EPA Certificate."

3.27. Respondent's sales records indicate that from August 25, 2018 through September 15, 2018, Respondent sold the Violative Products on at least 78 separate occasions.

3.28. On at least 78 occasions between August 25, 2018 and September 25, 2018, Respondent "distributed or sold" the Violative Products, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and 40 C.F.R. § 152.3.

#### **D. VIOLATIONS**

##### Counts 1-78: Distribution or Sale of Misbranded Pesticide Devices

3.29. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), provides that it shall be unlawful for any person in any State to distribute or sell to any person any device which is misbranded.

3.30. On at least 78 occasions between August 25, 2018 and September 25, 2018, Respondent distributed or sold the Violative Products.

3.31. At all times relevant to the allegations set forth herein, Aosion was not registered as an establishment pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20(a).

3.32. At all times relevant to the allegations set forth herein, the labels associated with the Violative Products did not include the Foreign Establishment Number. Therefore, at all times relevant to the allegations set forth herein, the Violative Products were misbranded as that term is defined by Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D). See also 40 C.F.R. § 152.500(b)(1).

3.33. Therefore, on at least 78 occasions between August 25, 2018 and September 25, 2018, Respondent distributed or sold misbranded devices, in violation of Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F).

#### Enforcement Authority

3.34. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$20,528 for each offense.

### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$41,200 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions

are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10,  
R10\_RHC@epa.gov

Martin Lovato  
U.S. Environmental Protection Agency  
Region 10  
Lovato.Martin@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however,

that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

04/26/2021

FOR RESPONDENT:



\_\_\_\_\_  
SANJAY CHANDIRAM, Co-Founder & CEO  
Kaliber Global, LLC

DATED:

\_\_\_\_\_

FOR COMPLAINANT:

\_\_\_\_\_  
EDWARD J. KOWALSKI, Director  
Enforcement & Compliance Assurance Division  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. FIFRA-10-2021-0067
	)	
KALIBER GLOBAL, LLC	)	<b>FINAL ORDER</b>
	)	
Bellevue, Washington,	)	
	)	
Respondent.	)	
	)	

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1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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RICHARD MEDNICK  
Regional Judicial Officer  
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: KALIBER GLOBAL, LLC, Docket No.: FIFRA-10-2021-0067**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was electronically delivered to:

Rachel Aramburu  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
Aramburu.rachel@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was electronically delivered to:

Sanjay Chandiram  
Co-Founder & CEO  
Kaliber Global, LLC  
1309 120th Ave NE  
Bellevue, Washington 98005-2124  
sanjay@kaliberglobal.com

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10