

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA**

2010 JUN 21 PM 12:55

HEARING CLERK

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EPA REGION 4

IN THE MATTER OF:

VIP Nail Solutions, Inc.

Respondent.

)
)
) **CIVIL COMPLAINT**
) **and**
) **NOTICE OF OPPORTUNITY**
) **FOR HEARING**
)
)
) **Docket No. FIFRA-04-2010-3024**
)
)
)

I. CIVIL COMPLAINT

A. Jurisdiction

1. This is a civil administrative complaint issued under the authority of Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA).
2. The Complainant, the Director of the Air, Pesticides and Toxics Management Division, Environmental Protection Agency (EPA) Region 4, is authorized by the EPA Administrator and the EPA Regional Administrator for Region 4 to issue a complaint on behalf of the Agency to persons alleged to be in violation of FIFRA. The Administrator of EPA delegated this authority to the Region 4 Administrator by EPA Delegation 5-14, dated May 11, 1994. The Region 4 Administrator delegated this authority to the Director, Air, Pesticides and Toxics Management Division by EPA Region 4 Delegation 5-14, dated September 7, 2005.
3. The Respondent is VIP Nail Solutions, Inc., a Georgia corporation located at 4443 Washington Road, Evans, Georgia 30809.

4. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
5. This Complaint serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

B. Statement of Facts

6. Complainant incorporates paragraphs 1 through 5 by reference.
7. On or about March 6, 2007, an inspector with the Georgia Department of Agriculture, duly authorized by EPA, conducted an inspection at Respondent’s facility located at 4443 Washington Road, Evans, Georgia 30809.
8. At the time of the inspection, Respondent was making claims on its website that its product, Sani-Soak Effervescent Sanitizing Pedicure Tablet, would “kill 99.9% of bacteria, fungus, and viruses.” Additionally the website made the claim that, “Chemical ingredients of this product have been approved by the U.S. Environmental Protection Agency (EPA) since 1969 . . .”
9. The inspector obtained four documentary samples of the Sani-Soak Effervescent Sanitizing Pedicure Tablet label during the inspection.
10. The Sani-Soak Effervescent Sanitizing Pedicure Tablet produced and offered for sale by Respondent on Respondent’s website and at its retail facility, is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in that it is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating a pest.
11. At the time of the inspection, Respondent was a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), 40 C.F.R. § 167.3 and 40 C.F.R. § 169.1.

12. At the time of the inspection, Respondent was “distributing or selling” pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
13. Respondent did not register with EPA its pesticide, Sani-Soak Effervescent Sanitizing Pedicure Tablet, as required by FIFRA Section 3.

C. Violations

COUNT 1

14. Complainant incorporates by reference herein paragraphs 1 through 13.
15. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, unless otherwise authorized by EPA.
16. Respondent distributed, sold, and offered for sale the pesticide Sani-Soak Effervescent Sanitizing Pedicure Tablet in an advertisement on its website. Therefore, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 40 C.F.R. § 168.22(a) which states that, “ it is unlawful to ‘offer for sale’ any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA Section 3. EPA interprets these provisions as extending to advertisements in any advertising medium to which pesticide users or the general public have access.”

COUNT 2

17. Complainant incorporates by reference herein paragraphs 1 through 16.
18. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is

adulterated or misbranded.

19. Pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136j(q)(1)(A), a pesticide is misbranded if the label has a statement, design, or graphic representation that is false or misleading in any particular.
20. Pursuant to 40 C.F.R. § 156.10 (a)(5), a pesticide is misbranded if its labeling is false or misleading in any particular including, “Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any Agency of the Federal Government.”
21. Respondent distributed, sold and offered for sale the pesticide Sani-Soak Effervescent Sanitizing Pedicure Tablet in an advertisement on its website stating that, “Chemical ingredients of this product have been approved by the U.S. Environmental Protection Agency (EPA) since 1969 . . .” EPA does not endorse products. Therefore, Respondents’ web advertisement of Sani Soak Effervescent Sanitizing Pedicure Tablet was false and misleading pursuant to Section 2(q) of FIFRA.
22. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), Respondent violated FIFRA by distributing, selling and offering for sale a misbranded pesticide.

D. Proposed Penalty

23. Section 14 of FIFRA, 7 U.S.C. § 136l, in conjunction with the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the regulations promulgated at 40 C.F.R. Part 19, authorizes the issuance of this Complaint for the assessment of a civil penalty. EPA proposes to assess a civil penalty against Respondent for the violation as set forth in Count 1 in the amount of \$5,850, and for the violation set forth in Count 2 in the amount of \$5,850, for a total proposed civil penalty of \$11,700.

E. Appropriateness of Proposed Penalty

24. The proposed penalty has been derived in accordance with the December 2009 Enforcement Response Policy (ERP) for FIFRA and in accordance with the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Inflation Adjustment Rule, 61 Fed. Reg. 69,360 (December 31, 1996), which provide for a 10% increase in the statutory maximum for violations of federal statutes after January 31, 1997, and a subsequent increase of 10% for violations occurring after March 15, 2004, 69 Fed. Reg. 7121 (February 13, 2004).
25. As set forth in the ERP and Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), in determining the amount of the penalty, Complainant must take into consideration the size of Respondent's business, the effect on the Respondent's ability to continue in business, and the gravity of the violation. Complainant has considered Respondent's financial condition in calculating the proposed penalty, insofar as is necessary to permit Respondent to continue in business.
26. EPA has designated Respondent's size of business as "Category I" (total business revenues of \$10,000,000 or greater per year) pursuant to the Penalty Policy. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of additional reliable financial information indicating that another category is appropriate.

II. NOTICE OF OPPORTUNITY FOR HEARING

A. Answer and Request for Hearing

27. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, as amended," 40 C.F.R. Part 22 (Consolidated Rules) govern the procedures of the hearing. A copy of the Consolidated

Rules accompanies this Complaint. Under these rules, you have the right to request a formal hearing to contest any material fact set forth in this Complaint and/or to contest the appropriateness of proposed penalty.

28. You must file a written Answer within 30 days of your receipt of this Complaint (unless a Consent Agreement and Final Order resolving this matter is filed within the 30 days) to avoid being found in default. Default constitutes an admission by you of all facts alleged in the Complaint, waives your right to a hearing, and results in having the above-cited penalty assessed without further proceedings.

29. Your Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which you have knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failures to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of allegation. Your Answer must also briefly state all facts and circumstances, if any, which constitute grounds for a defense and specifically request an administrative hearing (if desired). If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing.

Your written Answer to the Complaint should be sent to:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
Telephone: (404) 562-9511.

A copy of the Answer should also be sent to:

Lucia C. Mendez
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
Telephone: (404) 562-9637

B. Informal Settlement Conference

30. Whether or not you request a hearing, you may confer informally with Lucia C. Mendez at (404) 562-9637 or Patricia Livingston at (404) 562-9171 to discuss the facts of this case, the amount of the proposed penalty, or the possibility of a settlement. An informal settlement conference does not, however, affect your obligation to file a written Answer to the Complaint.
31. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with you in an informal settlement conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order (CAFO). A CAFO signed by EPA and the Respondent would be binding as to all terms and conditions specified therein upon signature by the EPA Regional Administrator.
32. Please be advised that after the Complaint is issued, pursuant to Section 22.8 of the Consolidated Rules, any *ex parte* discussion of the merits of any action with the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, Presiding Officer, or any person likely to advise these officials in the decision of the case is prohibited. *Ex Parte* discussion as used herein means communicating to any of the above officials by one party to a proceeding without notice to and in the absence of the other party.

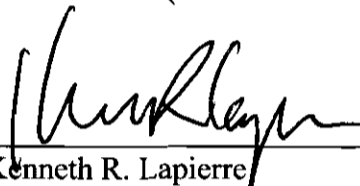
C. Payment of Penalty

33. If Respondent chooses not to contest any of the allegations set forth in this Complaint by filing a written Answer within 30 days of receipt of the Complaint, an authorized official should sign and submit an Affidavit of Compliance (in lieu of an Answer) that the violations have been corrected and pay the proposed penalty via cashier's or certified check. The Affidavit of Compliance should be sent to the Regional Hearing Clerk, EPA, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303-8960. The check must be payable to the "Treasurer, United States of America" and sent to the following banking address:

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

The check shall reference on its face the Docket Number (FIFRA-04-2010-3024).

6/21/10
Date


Kenneth R. Lapierre
Acting Director
Air, Pesticides, and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

I hereby certify that on the date noted below, I hand delivered the original and one copy of the foregoing Civil Complaint and Notice of Opportunity for Hearing, In the Matter of: VIP Nail Solutions, Inc., Docket No. FIFRA-04-2010-3024, to the Regional Hearing Clerk, Region 4. Furthermore, I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of this Civil Complaint and Notice of Opportunity for Hearing, and a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 to the following:

Vinh Tran, Registered Agent
VIP Nail Solutions, Inc.
4443 Washington Rd.
Evans, Georgia 30809

(Via Certified Mail, Return Receipt Requested)

A copy of this Civil Complaint was also sent via EPA's internal mail to the following:

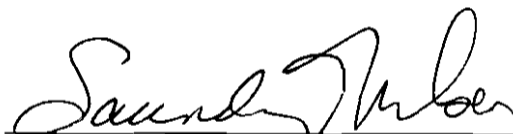
Patricia Livingston
Pesticides Section
Air, Pesticides, and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9171

(Via EPA's internal mail)

Lucia Mendez, Attorney
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9637

(Via EPA's internal mail)

Date: 6/21/10



Saundi J. Wilson, Paralegal Specialist
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303