

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

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U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGIONAL HEARING CLERK

In the Matter of:

LOGITECH, INC.,

Respondent.

Docket No. FIFRA-09-2010-0015

**ANSWER TO COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING,  
DEFENSES AND REQUEST FOR HEARING**

Respondent Logitech, Inc. (hereinafter, "Respondent"), by and through its undersigned counsel, pursuant to 40 C.F.R. § 22.15, answers the Complaint and Notice of Opportunity for Hearing (hereinafter, "Complaint") filed by the Associate Director for Agriculture, Communities and Ecosystems Division, United States Environmental Protection Agency, Region 9 (hereinafter, "Complainant") as follows:

**GENERAL DENIAL**

Unless specifically admitted below, Respondent denies each and every allegation contained in the Complaint, including the imposition of a civil penalty.

**RESPONSE TO SPECIFIC ALLEGATIONS**

The following numbered responses correspond to the numbered paragraphs set forth in Complainant's Complaint:

1. Respondent admits that it is a California corporation. The remaining allegations contained in numbered paragraph one (1) of the Complaint contain arguments and/or legal conclusions to which no response is required. To the extent that a response is required, Respondent admits that it is a "person" within the meaning of section 2(s) of the Federal Insecticide, Fungicide, and Rodenticide Act (hereinafter, "FIFRA"), 7 U.S.C. § 136(s), but

Respondent denies that it is subject to FIFRA or any implementing regulation promulgated thereunder as regards the sale or distribution of any “Cordless Desktop MX3200 Laser” (“MX3200”) identified in the Complaint.

2. Respondent denies that it manufactures, distributes or sells the MX3200 at its Fremont, California facility.

3. Respondent denies that it “distributed” or “sold” the “Cordless Desktop MX3200 Laser” at its Fremont, California facility from July 2, 2007 to December 27, 2007. Respondent admits that it distributed or sold the MX3200 in the United States from July 2, 2007 to December 27, 2007.

4. Respondent admits that the following statements were present on the MX3200 packaging in 2007: “Both the keyboard and the mouse incorporate the AgION™ antimicrobial compound, providing protection to prevent the growth of a broad range of bacteria, mold and mildew” and “Guards against growth of a broad range of bacteria.” Except as so admitted, Respondent denies the allegations in numbered paragraph four (4) of the Complaint.

5. The allegations contained in numbered paragraph five (5) of the Complaint contain arguments and/or legal conclusions to which no response is required. To the extent that a response is required, Respondent denies the allegations contained in numbered paragraph five (5) of the Complaint.

6. The allegations contained in numbered paragraph six (6) of the Complaint contain arguments and/or legal conclusions to which no response is required. To the extent that a response is required, Respondent denies the allegations.

7. The allegations contained in numbered paragraph seven (7) of the Complaint contain arguments and/or legal conclusions to which no response is required. To the extent that a response is required, Respondent denies that the MX3200 is a “pesticide” within the meaning

of, or for any purpose under, FIFRA or the United States Environmental Protection Agency's (hereinafter, "EPA's" or "the Agency's") implementing regulations.

8. Respondent admits that the MX3200 was not registered under FIFRA § 3, 7 U.S.C. § 136a, at any time relevant to this action.

9. The allegations contained in numbered paragraph nine (9) of the Complaint contain arguments and/or legal conclusions to which no response is required. To the extent that a response is required, Respondent denies the allegations contained in numbered paragraph nine (9) of the Complaint.

10. Respondent's answers to the allegations contained in numbered paragraphs one (1) to nine (9) of the Complaint are restated and incorporated herein by reference.

11. Respondent is without knowledge or information sufficient to form a belief at this time as to the truth or accuracy of the allegations contained in numbered paragraph eleven (11) of the Complaint and, therefore, denies the same.

12. Respondent is without knowledge or information sufficient to form a belief at this time as to the truth or accuracy of the allegations contained in numbered paragraph twelve (12) of the Complaint and, therefore, denies the same. Respondent further denies that any violation of FIFRA section 12(a)(1)(A) took place.

### **DEFENSES**

Without affecting the appropriate burden of proof and otherwise without waiver, limitation, prejudice or right to amend, Respondent hereby asserts its defenses and affirmative defenses against Complainant. Respondent reserves the right to raise additional affirmative defenses based upon further discovery and investigation.

### **FIRST DEFENSE**

Respondent has not violated FIFRA § 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), because Agion Type AJ is the only “substance or mixture of substances” within the meaning of FIFRA § 2(u), 7 U.S.C. § 136(u), for which Respondent has made any claim that could possibly demonstrate Respondent’s pesticidal intent under 40 C.F.R. § 152.25(a), and Agion Type AJ was registered under FIFRA § 3, 7 U.S.C. § 136a, at all times relevant to this action.

### **SECOND DEFENSE**

Respondent has not violated FIFRA § 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), because the MX3200 is not a “pesticide” within the meaning of, or for any purpose under, FIFRA or EPA’s implementing regulations.

### **THIRD DEFENSE**

The MX3200 is exempt from FIFRA regulation under 40 C.F.R. § 152.25(a).

### **FOURTH DEFENSE**

Given that Complainant registered Agion Type AJ as an “end use product” within the meaning of 40 C.F.R. § 152.3, Complainant cannot logically assert that Respondent has used Agion Type AJ as a “manufacturing use product,” as defined in 40 C.F.R. § 152.3, specifically, to manufacture or formulate other pesticide products, namely, the MX3200, and thereby violated FIFRA § 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A).

### **FIFTH DEFENSE**

The Complaint does not comply with 40 C.F.R. § 22.14(a)(4)(ii), because Complainant has not provided a brief explanation of the severity of each violation alleged.

### **SIXTH DEFENSE**

The Complaint does not address the civil penalty determination factors required by FIFRA § 14(a)(4), 7 U.S.C. § 1361(a)(4), and is unjust in light of such factors.

**SEVENTH DEFENSE**

The Complaint does not comply with FIFRA § 14(a)(4), 7 U.S.C. § 1361(a)(4), because it does not allege significant harm from the alleged violations.

**EIGHTH DEFENSE**

The Complaint fails to state any violation of FIFRA.

**REQUEST FOR HEARING**

Pursuant to 40 C.F.R. § 22.15(c), Respondent requests a hearing upon the issues raised in the Complaint and herein.

WHEREFORE, Respondent prays that judgment be entered against Complainant on all claims and that the Complaint be dismissed with prejudice in its entirety.

Respectfully submitted,

This 0<sup>th</sup> day of December 2010.

By:



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CERTIFICATE OF SERVICE

I certify that the original and a copy of the foregoing **Answer to Complaint and Notice of Opportunity for Hearing Defenses and Request for Hearing** was placed in an envelope as follow:

**OVERNIGHT DELIVERY:** I placed the sealed envelope(s) into packaging provided by the overnight delivery carrier and placed same for collection and overnight delivery at an office or regularly utilized drop box of the overnight delivery carrier.:

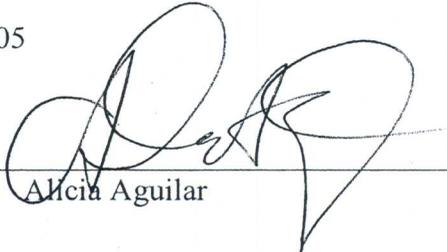
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

and that a true and correct copy of the **Answer to Complaint and Notice of Opportunity for Hearing Defenses and Request for Hearing** was placed in the United States Mail, addressed to the following:

David H. Kim  
Assistant Regional Counsel  
Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Dated: December 10, 2010

By:

  
Alicia Aguilar