

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

September 28, 2023 @ 7:27 pm

USEPA – Region II

Regional Hearing Clerk

In the Matter of

Tzumi Electronics LLC and
Enchante Accessories Inc.,

Respondents.

Proceeding Under the Federal
Insecticide, Fungicide and
Rodenticide Act, as amended.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. FIFRA-02-2023-5213

CONSENT AGREEMENT

1. This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136I(a) (hereinafter referred to as “FIFRA” or the “Act”), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter “CROP”).
2. Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.18(b)(3).
3. Complainant in this proceeding is the Director of the Enforcement and Compliance Assurance Division (“ECAD”), United States Environmental Protection Agency, Region 2 (“EPA”).
4. Respondents are Enchante Accessories Inc. (“Enchante”) and Tzumi Electronics LLC (“TElectronics”), related corporations organized under the laws of New York with a primary place of business located at 16 East 34th Street, New York, New York 10016. TElectronics is a division of Enchante.
5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. To avoid the burdens of litigating the issues raised herein, Respondents consent to the assessment of the civil penalty specified in this Consent Agreement and Final Order (CAFO) and to the terms of this CA/FO without the admission of any facts or liability.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

7. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondents each admit that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l(a), to commence a civil administrative proceeding on the violations described in the Factual Allegations and Alleged Violations section below.

8. Respondents each explicitly and knowingly waive their right to request a hearing as provided at 40 C.F.R. § 22.15(c) and any right they may have to contest the allegations in this Consent Agreement or the accompanying Final Order ratifying it (together hereinafter referred to as “this CA/FO”) or to appeal or otherwise seek review of this CA/FO in any forum.

INTRODUCTION

9. As described further below, Enchante is the importer of record for Tzumi-branded Ultraviolet (“UV”) Devices (“Tzumi Devices”) imported into the United States from China.

10. As described further below, TElectronics is the domestic distributor of the imported Tzumi Devices.

STATUTORY AND REGULATORY AUTHORITIES

11. Section 2(s) of FIFRA, 7 U.S.C. § 136(s) defines the term “person” to mean any individual, partnership, association, corporation, or any group of persons whether incorporated or not.

12. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism.

13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

14. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines a device as any instrument or contrivance (other than a firearm) that 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 microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

15. On July 3, 1975, the Administrator promulgated regulations (at 40 F.R. 28242) amending the Code of Federal Regulations pursuant to this authority so as to provide that devices, as defined in FIFRA § 2(h), 7 U.S.C. § 136(h), are subject to the requirements of FIFRA §§ 2(q)(1)(A)-(G) , 7 U.S.C. §§ 136 (q)(1)(A)-(G), and to those provisions of FIFRA § 7, 7 U.S.C. § 136e, which are necessary to effectuate the purposes of FIFRA with respect to devices.

16. Pursuant to 40 C.F.R. § 167.3(h), the term "pesticidal product" means "a pesticide, active ingredient, or device."

17. Pursuant to Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), the term "establishment" means "any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale."

18. Pursuant to 40 C.F.R. § 167.3, the term "establishment" similarly means "any site where a pesticidal product, active ingredient, or device is produced."

19. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20, provide that no person shall produce any pesticide or active ingredient used in producing a pesticide that is subject to FIFRA in any State unless the establishment in which it is produced is registered with the Administrator of EPA.

20. Forty C.F.R. § 152.500(b)(1) states, in pertinent part, that "a device is subject to the requirements set forth in FIFRA section 2(q)(1) and 40 C.F.R. part 156, with respect to labeling."

21. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines the term "label" as written, printed, or graphic matter on or attached to, the pesticide or device or any of its containers or wrappers.

22. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “labeling” as all labels or other written, printed or graphic matter (a) accompanying the pesticide or (b) to which reference is made in literature accompanying the pesticide.

23. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), provides in relevant part that a label must “bear the registration number assigned... to each establishment in which it was produced.”

24. Forty C.F.R. §§ 156.10(a)(1)(v) and (f) provide that every pesticide product must bear a label showing the registration number of the producing establishment clearly and prominently.

25. 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 does not bear on its label the registration number assigned to the establishment in which it was produced.

26. “To distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), 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.”

27. The importation of pesticide products into the United States is a distribution or sale. Importation of pesticide products is further governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

28. Section 17(e) of FIFRA, 7 U.S.C. § 136o(e), and 19 C.F.R § 12.1(b) provide that the regulations for the importation of pesticides and devices are joint regulations enforceable by the cooperating agencies.

29. Nineteen C.F.R. § 12.112 states, in pertinent part, that an importer desiring to import pesticides or devices into the United States shall submit to the Administrator a Notice of Arrival (“NOA”) of Pesticides or Devices [EPA Form 3540-1] (“Notice of Arrival” or “NOA”) prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

30. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides that it shall be unlawful for any person in any State who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports.

31. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1) states that “[a]ny registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty of not more than \$5,000 for each offense.”

32. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461 *note*, and its implementing regulations at 40 C.F.R. Part 19, increased the maximum statutory civil penalty for violations under Section 14(a)(1) of FIFRA, 7 U.S.C. §136l(a)(1), where penalties are assessed on or after January 6, 2023, to \$23,494.

FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

33. At all times relevant to this CAFO, each Respondent was a corporation and therefore a “person,” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), subject to FIFRA and the regulations promulgated thereunder.

34. On May 28, 2020, EPA issued EPA Establishment Number 96641-CHN-1 to TElectronics for the Shenzhan Kinlan Technology Company Limited (“Kinlan Facility”) located in Shenzhen, China. On June 15, 2022, EPA terminated the establishment registration of the Kinlan Facility at TElectronics’ request.

35. The Kinlan Facility began production of Tzumi Devices for export to the United States sometime prior to May 20, 2020.

36. In late August 2020, a duly authorized EPA Region 2 inspector (“EPA Inspector”) conducting off-site compliance monitoring pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, observed the Tzumi Devices offered for sale on the websites of several on-line retailers. The product descriptions (labeling) for the Tzumi Devices included pesticidal claims and the product labels

observed on the websites did not appear to display an establishment number for the producing establishment.

37. On September 1, 2020, EPA sent an Advisory Letter (“AL”) to Tzumi Innovations (“TInnovations”)¹, addressing *inter alia* the Tzumi Devices. The letter stated that, “EPA ... observed pesticide devices under the Tzumi brand being sold on HomeDepot.com such as the ‘ION UV PRO Phone Sanitizer with wireless charging.’” The letter further advised TInnovations that, “All pesticide devices must ... [be] produced in an EPA registered establishment and bear the establishment number on the label.”

38. In response to the AL, Respondents’ “compliance/import manager” sent EPA an E-mail, dated September 17, 2020, stating that “[W]e were previously unfamiliar with FIFRA’s regulation of devices and thus did not submit a notice of arrival for these past shipments Also, after receiving the advisory letter, we examined our labels again and identified that they did not include the EPA establishment number We anticipate that products with the updated labeling will be imported starting around mid-October.” (“Chen E-mail”)² Attached to the Chen E-mail were images of the label and/or labeling for the following Tzumi Devices: *IonUV sanitizer UV wand* - Model No. 7611; *IonUV sanitizer & wireless charger* - Model No. 7609; *Phone Spa Phone & Accessory Sanitizer* - Model No. 7464; *PhoneSpa Phone & Accessory Sanitizer Portable UV-C Wand* - Model No. 7556; and *PhoneSpa Pro UV Phone Sanitizer* - Model No. 7566.

39. The labels and labeling provided for each of the Tzumi Devices identified in the prior paragraph did not display an EPA Establishment Number.

40. On October 22, 2020, a Microsoft TEAMS teleconference meeting was held with representatives of TElectronics to discuss EPA’s concerns with the Tzumi Devices.

¹ The Advisory Letter was addressed to TInnovations, a sister company to the Respondents whose business activities are unrelated to the distribution and sale of Tzumi Devices. TInnovations is not a party to this CAFO.

² The email identified the sender as Kate Chen, Compliance Manager, Tzumi Electronics, Division of Enchante Accessories, Inc. Compliance/Import.

41. On January 15, 2021, EPA sent a Request for FIFRA Compliance and Inspection Information letter (“IRL”) to Respondents pursuant to Section 8(b) of FIFRA, 7 U.S.C. § 136f(b) and Section 9(a)(1) of FIFRA, 7 U.S.C. § 136g(a)(1), in lieu of conducting an on-site inspection, requesting *inter alia* information regarding the Tzumi Devices.

42. Respondents submitted their responses to the IRLs on February 8, 2021 and supplemented their responses on February 19, 2021.

43. From March 2021 to June 2021, EPA issued IRLs to fifteen (15) nationwide retailers, requesting, among other things, information regarding the distribution and sale of the Tzumi Devices. From May through August 2021, EPA received responses from the retailers to the IRLs.

44. On September 28, 2021 and December 22, 2022, Respondents provided EPA with a large volume of information regarding the types of pesticide devices manufactured in China for Tzumi, the labels on these Tzumi Devices, and the imports of Tzumi Devices into the United States.

45. Following a settlement meeting held in early April 2023, Respondents also provided EPA, on June 16, 2023 and July 28, 2023, with a substantial volume of additional information regarding Respondents’ distribution (import and domestic distribution) and sales of and economic benefit from the Tzumi Devices.

46. From July 2020 through August 2023, EPA Region 2 staff reviewed the information collected from the IRLs; publicly available internet sites; EPA inspections conducted in other Regions; other state and federal agencies; and from Respondents. On the basis of this review, EPA determined that:

- a. At all times relevant, each Respondent was a “distributor or seller” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
- b. At all times relevant, each Respondent, was a “distributor” within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

47. Respondent Enchante distributed or sold (imported) and Respondent Tzumi Electronics distributed or sold (received and held for further distribution) pesticide devices that did not bear an EPA Establishment Number in violation of FIFRA and its implementing regulations.

Enchante Accessories

Sales and distributions (import)

48. Between May 5, 2020 and September 17, 2020, the following Tzumi-branded Tzumi Devices were imported into the United States:

Tzumi-Branded UV Device	Model No.
IonUV sanitizer UV wand	7611
IonUV sanitizer & wireless charger	7609
PhoneSpa Phone & Accessory Sanitizer	7464
PhoneSpa Phone & Accessory Sanitizer Portable UV-C Wand (Mini sanitizer wand)	7556
PhoneSpa Pro UV Phone Sanitizer	7566
Ion UV Sanitizer Wand	7548
Ion UV Phone Sanitizer	7524
Ion UV Sanitizer Wand	7608
PhoneSpa UV Sanitizer Wand	7562
PhoneSpa UV Phone Sanitizer	7685
Ion UV Phone and Accessory	7564
Ion UV Sanitizer Wand	7549
PhoneSpa UV Phone Sanitizer	7700
PhoneSpa UV Phone Sanitizer	7699
PhoneSpa UV Phone Sanitizer	7698

49. Each of the Tzumi Devices listed in the table above were shipped into the Port of Long Beach, California between May 5, 2020 and September 17, 2020 in one of the following shipments (“Shipments”):

Import Entry Number	Entry Date	Port of Entry
Entry # 442 2371758 6	6/8/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 2371820 4	6/15/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 2371862 6	6/17/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 2372204 0	7/17/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9201847 8	5/5/2020	Los Angeles/Long Beach Seaport, California - 2704

Entry # 442 9203535 7	6/3/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9203729 6	6/12/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9204156 1	6/19/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9204901 0	6/26/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9205825 0	7/3/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9206777 2	7/10/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9207467 9	7/16/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9208730 9	7/24/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9208740 8	7/24/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9209750 6	7/30/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9210625 7	8/7/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9210675 2	8/7/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9211185 1	8/14/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9211423 6	8/14/2020	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9212533 1	8/20/202	Los Angeles/Long Beach Seaport, California - 2704
Entry # 442 9213491 1	8/29/2020	Los Angeles/Long Beach Seaport, California - 2704

50. Enchante was listed as the importer of record on the entry paperwork electronically filed with U.S. Customs and Border Protection (“CBP”) for each of the Shipments.

51. Each of the Tzumi Devices in the Shipments were subject to regulation under FIFRA.

52. Each of the Tzumi Devices in the Shipments are “devices” within the meaning of Section 2(h) of FIFRA, 7 U.S.C. § 136(h).

53. Each of the Tzumi Devices in the Shipments bore a label that did not display the EPA Establishment Number assigned under FIFRA Section 7 to the establishment in which they were produced.

54. Each of the Shipments constitutes a separate unlawful distribution or sale of pesticide devices under Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), for which a penalty may be assessed pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

55. Enchante’s distributions and sales of the Tzumi Devices, as described herein, constitute twenty-one (21) separate violations of Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F).

Failure to file required reports (NOA)

56. Enchante is and was at all times relevant to the allegations herein, an “importer,” as that term is defined in 19 C.F.R. § 101.1.

57. Enchante submitted no NOA to EPA prior to the arrival of any of the Tzumi Devices in the Shipments in the United States.

58. Each failure to submit a NOA prior to the arrival of the Tzumi Devices in each of the Shipments is a failure to submit a required report, an unlawful act under Section 12(a)(2)(N) of FIFRA and the regulations at 19 C.F.R. §§ 12.110 - 12.117, for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

59. Enchante’s failures to file required reports, as described herein, constitute twenty-one (21) separate violations of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

TElectronics

Sales and distributions (hold for distribution)

60. Upon entry into the United States, each of the Shipments was transferred to a warehouse under the control of TElectronics. TElectronics held each Shipment for further distribution to downstream retailers.

61. Each Shipment so received and held for distribution by TElectronics is a distribution or sale, as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and an unlawful act under Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), for which a penalty may be assessed pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

62. TElectronics’ distributions and sales of the Tzumi Devices, as described herein, constitute twenty-one (21) separate violations of Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F).

CERTIFICATIONS

63. Each Respondent certifies under penalty of law the following:

a. As of the date of execution of this CAFO, it is in compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. § 136 *et seq.*, and its implementing regulations.

- b. It is not currently engaged in the business of producing, importing, selling or distributing the Tzumi Devices or any other pesticide device.
- c. It retains no existing stock of the Tzumi Devices.
- d. Each of its submissions made to EPA on 9/17/20, 2/8/21, 2/19/21, 9/28/21, 12/22/22, 6/16/23, and 7/28/23 are true, accurate, complete, and not misleading. EPA has relied on this information provided by Respondents to enter into this settlement.

CIVIL PENALTY

64. Respondents shall pay, by cashier's or certified check or electronically by Fedwire, a civil penalty to EPA in the total amount of **One Million Five Hundred Thousand Dollars (\$1,500,000)**.

65. Respondents shall make payment of the penalty via one of the following payment transmittal methods:

- a. If Respondents choose to make payment by check, then the check shall be made payable to the "Treasurer, United States of America", and shall be mailed by one of the following two methods:

i. STANDARD DELIVERY

the check shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

ii. SIGNED RECEIPT CONFIRMATION DELIVERY (FedEx, DHL, UPS, USPS, Certified, Registered, etc.)

United States Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

The check shall be identified with a notation thereon listing the case name, ***In the Matter of Tzumi Electronics LLC and Enchante Accessories, Inc.***, and **Docket No. FIFRA-02-2023-5213**.

b. If Respondents choose to make the payment through Fedwire, then Respondents shall provide the following information to its remitter bank (Federal Reserve Bank of New York) when each payment is made:

1. Amount of Payment: **\$1,500,000.00**
2. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045**
3. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
4. Federal Reserve Bank of New York ABA routing number: **021030004**
5. Field Tag 4200 of the Fedwire message should read: **D 8010727**
Environmental Protection Agency
6. Name of Respondents and Matter: **Tzumi Electronics LLC and Enchante Accessories, Inc.**
7. Docket Number: **FIFRA-02-2023-5213**

c. If Respondents choose to make an on-line payment, Respondents shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under “EPA Miscellaneous Payments – Cincinnati Finance Center;” and open the form and complete the required fields. Once payment has been effected, Respondents shall email proof of payment to Yu.Jeannie@epa.gov and to Wise.Milton@epa.gov with ***In the Matter of Tzumi Electronics LLC and Enchante Accessories, Inc.*** as the subject line.

66. The civil penalty of \$1,500,000 must be received by EPA *on or before* thirty (30) calendar days from the date on which the Regional Judicial Officer signs the Final Order located at the end of this CA/FO (the “due date”). Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

67. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States,

including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims.

a. Interest: Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on any portion of the civil penalty not paid by the relevant Due Date(s) specified above. Forty C.F.R. 13.11 (a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) on installment payments.

b. Handling Charges: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar period, or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

c. Late Penalty Charge: A late penalty charge of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

68. The civil penalty, including any payment(s) for interest or late payment and handling charges that come due, constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.

69. Stipulated Penalties. Respondents agree that false certification shall constitute a violation of this CA/FO, and Respondents shall be liable to EPA for a lump stipulated penalty of **Fifty Thousand Dollars (\$50,000.00)** for each such false certification.

a. If in the future, EPA believes that the information to which Respondents have certified herein was inaccurately or falsely certified, EPA will so advise Respondents of its belief

and basis and will afford the Respondents thirty (30) days to submit a response to EPA. The Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under the CA/FO. After EPA's review of any comments submitted, EPA shall provide a written statement of its decision to the Respondents, which decision shall be final and binding upon Respondents.

b. If, after review of Respondents' submissions, if any, pursuant to the preceding paragraph, Complainant determines that Respondents have provided an inaccurate or false certification, or if Respondents submit no response, all stipulated penalties are due and payable within thirty (30) calendar days of the Respondents' receipt from EPA of a written demand for payment of the penalties. Such demand for payment may be sent by electronic mail or certified mail to the Respondents' addressees identified in Paragraph 74, below. All stipulated penalty payments shall be made in accordance with the payment instructions in Paragraph 65, above.

c. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this Consent Agreement. Failure to pay any stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection and/or other appropriate action.

GENERAL PROVISIONS

70. Respondents acknowledge their awareness of the statutory provisions of FIFRA, as amended, 7 U.S.C. § 136 *et seq.*, and its implementing regulations, and shall hereinafter maintain compliance with FIFRA and its implementing regulations.

71. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondents. Full payment of the penalty shall only resolve Respondents' liability for federal civil penalties for the violations described in Paragraphs 52-59, and 60-62 above. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law.

72. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to

comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

73. Compliance with the requirements and provisions of this CAFO shall not constitute a defense to any subsequent (*i.e.*, following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of FIFRA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.

74. Respondents consent to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via electronic mail to the following addressee(s):

Adam Cohen
Vice President
Enchante Accessories, Inc
16 East 34th Street
New York, New York 10016
ACohen@ench.com

and

Abraham Weinberger
Chief Financial Officer
Tzumi Electronics
16 East 34th Street
New York, New York 10016
Abraham@tzumi.com

Delivery of the fully executed documents to the email addressees in this paragraph shall constitute Respondents' receipt and acceptance of the CAFO.

75. Any responses, documentation, and other communication submitted to EPA in

connection with this Consent Agreement shall be sent by email to:

Kristen Ridarick
Lead Paint and Pesticides Compliance Section
Enforcement and Compliance Assurance Division
Ridarick.Kristen@epa.gov

and

Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel
Yu.Jeannie@epa.gov

Unless the above-named EPA contacts are later advised otherwise by electronic mail, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty in accordance with the provisions of this CAFO), to the Respondents' addressees identified in Paragraph 74, above.

76. Respondents have read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondents consent to the issuance of the accompanying Final Order. Respondents agree that all terms of settlement are set forth herein.

77. Respondents explicitly and knowingly consent to the assessment of the civil penalty as set forth in this Consent Agreement and agree to pay the civil penalty and any stipulated penalties that become due in accordance with the terms of this Consent Agreement.

78. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.

79. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement and Final Order, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

80. The provisions of this Consent Agreement and Final Order shall be binding upon both

EPA and Respondents, their officers/officials, agents, authorized representatives and successors or assigns.

81. Each party hereto agrees to bear its own costs and fees in this matter.

Respondents:

BY: Adam Cohen Digitally signed by Adam
Cohen
Date: 2023.09.26
16:22:35 -04'00'
(Signature)

NAME: Adam Cohen

TITLE: Vice President

COMPANY NAME: Enchante Accessories, Inc.

DATE: _____

BY: abraham weinberger Digitally signed by
abraham weinberger
Date: 2023.09.26
15:52:16 -04'00'
(Signature)

NAME: Abraham Weinberger


TITLE: Chief Financial Officer

COMPANY NAME: Tzumi Electronics LLC

DATE: _____

COMPLAINANT:

DORE
LAPOSTA



Digitally signed by DORE
LAPOSTA
Date: 2023.09.27
08:53:58 -0400'

Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement in **In the Matter of Tzumi Electronics LLC and Enchante Accessories, Inc.** and bearing Docket Number FIFRA-02-2021-5213. The Consent Agreement, which has been duly accepted and entered into by the parties, is hereby approved and incorporated into this Final Order. This Final Order is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of electronic filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

LISA GARCIA Digitally signed by LISA
GARCIA
Date: 2023.09.27
18:16:32 -04'00'

Lisa F. Garcia
Regional Administrator
United States Environmental Protection
Agency – Region 2
290 Broadway
New York, New York 10007-1866

DATE: _____

CERTIFICATE OF SERVICE


I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order (“CAFO”), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

By Electronic Mail:

Karen Maples
Office of the Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

Counsel for Respondents
Tom H. Prol
Sills Cummis & Gross P.C.
One Riverfront Plaza
Newark, New Jersey 07102
Tprol@sillscummis.com

Dated: September _____, 2023
New York, New York

JEANNIE YU  Digitally signed by
JEANNIE YU
Date: 2023.09.28
07:06:48 -0400'
