

SYLVIA QUAST
Regional Counsel

Carol Bussey
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3950
bussey.carol@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

In the Matter of:)	
)	Docket No. FIFRA-09-2024-0043
)	
U.S. Jaclean, Inc.,)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
)	
<u>Respondent.</u>)	

I. PRELIMINARY STATEMENT

This is a civil administrative action brought pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against U.S. Jaclean, Inc. for violations of section 12 of FIFRA, 7 U.S.C. § 136j.

Complainant is the Manager of the Toxics Section in the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region IX, who has been duly delegated the authority to issue this Complaint and Notice of Opportunity for Hearing (“Complaint”) pursuant to EPA Region 9 Delegation R9-5-14 (Feb. 11, 2013) and EPA Administrator Delegation 5-14 (May 11, 1994, updated Feb. 4, 2016).

Respondent is U.S. Jacleen, Inc, (“Respondent”), a California corporation whose principal offices are located at 1816 W. 135th Street in Gardena, California.

II. APPLICABLE STATUTORY AND REGULATORY SECTIONS

1. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”
2. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), provides that “pest” means “any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other living micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).”
3. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), provides that a “pesticide” means, in part, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
4. 40 C.F.R. § 152.15 states, in pertinent part, that “a pesticide is any substance (or mixture of substances) intended for a pesticidal purpose...” and that “a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:
(a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that: (1) the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or (2) the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or (b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for a pesticidal

purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.”

5. Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), defines the term “antimicrobial pesticide,” in part, as “a pesticide that (A) is intended to (i) disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or (ii) protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime..”
6. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines the term “device,” in part, as “any instrument or contrivance. . . which is intended for trapping, destroying, repelling, or mitigating any pest or other form of plant or animal life. . .”
7. 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.”
8. Section 2(p)(2)(A) of FIFRA, 7 U.S.C. § 136(p)(2)(A), provides that the term “labeling” means “all labels and all other written, printed, or graphic matter...accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device.”
9. Section 2(v) of FIFRA, 7 U.S.C. § 136(v), provides that the term “plant regulator” means “any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering

the behavior of the plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, the term “plant regulator” shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products intended for improvement, maintenance, survival, health, and propagation of plants, and are not for pest destruction and are nontoxic, nonpoisonous in the undiluted concentration”

10. Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), provides that a pesticide is “misbranded” if “(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular...(D) its label does not bear the registration number assigned under section 136e of [the Act] to each establishment in which it was produced..”
11. 40 C.F.R. § 156.10(a)(5) states that, “[p]ursuant to section 2(q)(1)(A) of the Act, a pesticide or device declared subject to the Act pursuant to §152.500 is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include: (ix) [c]laims as to the safety of the pesticide or its ingredients, including statements such as “safe,” “nonpoisonous,” “noninjurious,” “harmless” or “nontoxic to humans and pets” with or without such a qualifying phrase as “when used as directed; and (x) [n]on-numerical and/or comparative statements on the safety of the product, including but not limited to: (A) “[c]ontains all natural ingredients;” (B) “[a]mong the least toxic chemicals known;” (C) “[p]ollution approved.”

12. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), provides that the term “distribute or sell” means “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.”
13. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides that no person in any State may distribute or sell to any person any pesticide that is not registered under this Act.
14. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that it shall be unlawful for any person to distribute or sell to any person a pesticide which is not registered with EPA under section 3 of FIFRA.
15. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person to distribute or sell to any person a pesticide which is adulterated or misbranded.
16. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), provides that it shall be unlawful for any person to distribute or sell to any person any device which is misbranded.

III. ALLEGATIONS

17. Paragraphs 1 through 16 above are hereby realleged and incorporated by reference.
18. At all times relevant to this Complaint, Respondent was a corporation and therefore a "person" as defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
19. At all times relevant to this Complaint, Respondent was a wholesaler of consumer health and wellness products, including household goods, that owned and/or operated a facility located at 1816 W. 135th Street in Gardena, California (“Facility”).
20. At all times relevant to this Complaint, Respondent sold the products, Hattori’s Living Room Wipes with Alkaline Electrolyzed Water (“Hattori’s Living Room Wipes”),

Hattori's Kitchen Wipes with Alkaline Electrolyzed Water ("Hattori's Kitchen Wipes"), and Hattori's Floor Wipes with Alkaline Electrolyzed Water ("Hattori's Floor Wipes") at the Facility.

21. At all times relevant to this Complaint, the label on each of the products, "Hattori's Living Room Wipes," Hattori's Kitchen Wipes," and "Hattori's Floor Wipes" contained the claim "[e]lectrolyzed water is an effective...sanitizer."
22. Based on the claim on their labels, each of the products, "Hattori's Living Room Wipes," Hattori's Kitchen Wipes," and "Hattori's Floor Wipes" is a "pesticide" pursuant to section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.15 and specifically, an "antimicrobial pesticide" pursuant to section 2(mm)(A)(i) of FIFRA, 7 U.S.C. § 136(mm)(A)(i).
23. At all times relevant to this Complaint, the pesticides, "Hattori's Living Room Wipes," Hattori's Kitchen Wipes," and "Hattori's Floor Wipes" were not registered with EPA under section 3 of FIFRA, 7 U.S.C. § 136a.

COUNTS 1-5: Distribution or sale of an unregistered pesticide

24. Paragraphs 1 through 23 above are hereby realleged and incorporated by reference.
25. On or about January 5, 2021, Respondent "distributed or sold" the pesticide, "Hattori's Kitchen Wipes," as defined in section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to a customer.
26. From on or about August 8, 2021 to on or about October 31, 2022, Respondent "distributed or sold" the pesticide, "Hattori's Living Room Wipes," as defined in section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to a customer in at least three (3) separate transactions.

27. On or about August 11, 2021, Respondent “distributed or sold” the pesticide, “Hattori’s Floor Wipes,” as defined in section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to a customer.
28. Consequently, Respondent’s “distributions or sales” of the pesticides, “Hattori’s Living Room Wipes,” Hattori’s Kitchen Wipes,” and “Hattori’s Floor Wipes” from on or about January 5, 2021 to on or about October 31, 2022 constitute five (5) violations of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), which provides that it is unlawful for any person to distribute or sell to any person a pesticide which is not registered with EPA under section 3 of FIFRA.

COUNTS 6-10: Distribution or sale of a misbranded pesticide

29. Paragraphs 1 through 28 above are hereby realleged and incorporated by reference.
30. At all times relevant to this Complaint, the label of each of the pesticides, “Hattori’s Living Room Wipes,” Hattori’s Kitchen Wipes,” and “Hattori’s Floor Wipes,” bore the claim that it is “[n]on-toxic & safe.”
31. Based on the label of each of the pesticides, “Hattori’s Living Room Wipes,” Hattori’s Kitchen Wipes,” and “Hattori’s Floor Wipes,” bearing the claim that it is “[n]on-toxic & safe,” the pesticides, “Hattori’s Living Room Wipes,” Hattori’s Kitchen Wipes,” and “Hattori’s Floor Wipes,” are each “misbranded” pursuant to section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), and 40 C.F.R. § 156.10(a)(5)(ix).
32. Consequently, Respondent’s “distributions or sales” of the pesticides, “Hattori’s Living Room Wipes,” Hattori’s Kitchen Wipes,” and “Hattori’s Floor Wipes,” from on or about January 5, 2021 to on or about October 31, 2022 constitute five (5) violations of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which provides that it is unlawful for

any person to distribute or sell to any person a pesticide which is adulterated or misbranded.

COUNTS 11-57: Distribution or sale of an unregistered pesticide

33. Paragraphs 1 through 32 above are hereby realleged and incorporated by reference.
34. At all times relevant to this Complaint, Respondent sold the product, HB-101 All-Natural Plant Vitalizer (“HB-101”), at the Facility.
35. At all times relevant to this Complaint, the labeling of the product, “HB-101” contained the following claims: “increase longevity of flowers” and “larger and heavier fruit.”
36. Based on the claims on its labeling, the product, “HB-101” is a “plant regulator” pursuant to Section 2(v) of FIFRA, 7 U.S.C. § 136(v).
37. Based on the claims on its labeling, the product, “HB-101” is a “pesticide” pursuant to section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.15.
38. At all times relevant to this Complaint, the pesticide, “HB-101,” was not registered with EPA under section 3 of FIFRA, 7 U.S.C. § 136a.
39. From on or about August 8, 2021 to on or about October 31, 2022, Respondent “distributed or sold” the pesticide, “HB-101,” as defined in section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to numerous customers in at least forty-seven (47) separate transactions.
40. Consequently, Respondent’s “distributions or sales” of the pesticide, “HB-101” from on or about August 8, 2021 to on or about October 31, 2022 constitute forty-seven (47) violations of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), which provides that it is unlawful for any person to distribute or sell to any person a pesticide which is not registered with EPA under section 3 of FIFRA.

COUNTS 58-60: Distribution or sale of a misbranded device

41. Paragraphs 1 through 40 above are hereby realleged and incorporated by reference.
42. At all times relevant to this Complaint, Respondent sold the product, “Ganso Alkaline Water Ionizer,” at the Facility.
43. At all times relevant to this Complaint, the labelling of the product, “Ganso Alkaline Water Ionizer,” contained the claims that it “switches” tap water into “sanitized water” and that this water is a “natural sanitizer” next to an image of a water bottle spraying water onto a hard surface.
44. Based on the claims and the image on its labelling, the product, “Ganso Alkaline Water Ionizer,” is a “device” pursuant to Section 2(h) of FIFRA, 7 U.S.C. § 136(h).
45. At all times relevant to this Complaint, the labelling of the device, “Ganso Alkaline Water Ionizer,” did not bear a registration number assigned under section 136e of FIFRA to each establishment in which it was produced.
46. Thus, at all times relevant to this Complaint, the device, “Ganso Alkaline Water Ionizer,” was “misbranded” pursuant to section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D).
47. From on or about November 1, 2021 to on or about October 31, 2022, Respondent “distributed or sold” the device, “Ganso Alkaline Water Ionizer,” as defined in section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to customers in at least three (3) separate transactions.
48. Consequently, Respondent’s “distributions or sales” of the device, “Ganso Alkaline Water Ionizer,” from on or about November 1, 2021 to on or about October 31, 2022 constitute three (3) violations of section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F),

which provides that it is unlawful for any person to distribute or sell to any person any device which is misbranded.

IV. PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19 (see 88 Fed. Reg. 89,309 [Dec. 27, 2023]) provide that any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty of not more than \$24,255 for each offense that occurred after November 2, 2015 and is assessed on or after December 27, 2023. When determining an appropriate civil penalty, section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Accordingly, Complainant requests that, after consideration of these statutory assessment factors, Respondent be assessed a civil administrative penalty of up \$24,255 for each of the violations of FIFRA set forth above.

V. NOTICE OF OPPORTUNITY TO REQUEST HEARING

You have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules of Practice") at 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

You must file a written Answer within thirty (30) days of receiving this Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the

Complaint and a waiver of the right to a hearing and to avoid having the above penalty assessed without further proceedings. If you choose to file an Answer, you are required by the Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny any of the allegations in this Complaint will constitute an admission of the undenied allegation.

The Answer shall also state the circumstances and arguments, if any, which are alleged to constitute the grounds of defense, and shall 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. The Answer must be filed with:

Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
R9 Hearing Clerk@epa.gov

In addition, please send a copy of the Answer and all other documents that you file in this action to:

Carol Bussey
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
bussey.carol@epa.gov

Carol Bussey is the attorney assigned to represent EPA in this matter and can be contacted at bussey.carol@epa.gov or (415) 972-3950.

You are further informed that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of any action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

VI. INFORMAL SETTLEMENT CONFERENCE

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through informal conferences. Therefore, regardless of whether you request a hearing or not, you may confer informally with EPA through Ms. Bussey, the EPA attorney assigned to this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility of settlement. **An informal settlement conference does not, however, affect your obligation to file an Answer to this Complaint.**

VII. ALTERNATIVE DISPUTE RESOLUTION

The parties also may engage in any process within the scope of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 *et seq.*, which may facilitate voluntary settlement efforts. Dispute resolution using alternative means of dispute resolution does not divest the Presiding Officer of jurisdiction nor does it automatically stay the proceeding.

VIII. CONSENT AGREEMENT AND FINAL ORDER

EPA has the authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference or through alternative dispute resolution. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties would be binding as to all terms and conditions specified therein when the Regional Judicial Officer signs the Final Order.

Dated on this 20th day of March 2024.

**MATTHEW
SALAZAR**

Digitally signed by
MATTHEW SALAZAR
Date: 2024.03.20 16:03:18
-07'00'

Matt Salazar, PE
Manager, Toxics Section
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX and that a true and correct copy of (1) the Complaint and Notice of Opportunity for Hearing; (2) the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22; and (3) the FIFRA Enforcement Response Policy; and (4) the Memorandum re: Amendments to EPA's Civil Penalty Policies to Account for Inflation (January 10, 2024)/Transmittal of the 2024 Civil Monetary Penalty Inflation Adjustment Rule were sent by U.S. Certified Mail, Return Receipt Requested, to:

Michael Kogure
President
U.S. Jaclean, Inc.
1816 W.135th Street
Gardena, CA 90249

Certified Mail # 7019 0140 0000 7661 7823

Minoru Kogure
Agent for Service- U.S. Jaclean, Inc.
10 Palos Verdes Lane
Rolling Hills Estates, CA 90274

Certified Mail # 7019 0140 0000 7661 7816

Date: MAR 21 2024

By: Carol Sachs
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX