



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2013 AUG 15 A 10:23
REGIONAL HEARING
CLERK

August 15, 2013

VIA ELECTRONIC MAIL (PDF) & CERTIFIED MAIL

Peter Melamed, Esq.
Kim & Bae, P.C.
Attorneys at Law
2160 North Central Road
Suite 303
Fort Lee, NJ 07024

Re: In the Matter of Daifuku Trading Corp.
FIFRA-02-2013-5102

Dear Mr. Melamed:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter, signed by the Regional Administrator of the United States Environmental Protection Agency ("EPA"), Region 2.

Please assure that your client, Daifuku Trading Corp., makes arrangement for payment of the civil penalty in accordance with the timeframes specified in the CA/FO.

Thank you for your cooperation in working with us to resolve this matter. If you have any questions, please contact me at (212) 637-3224.

Sincerely yours,

A handwritten signature in black ink, appearing to read "BAber".

Bruce H. Aber
Assistant Regional Counsel

Enclosure

cc: Karen Maples, Region 2 Regional Hearing Clerk
Marcedius Jameson, NJDEP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 AUG 15 A 10:23
REGIONAL HEARING
CLERK

In the Matter of

Daifuku Trading Corp.
Respondent.

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

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. FIFRA-02-2013-5102

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136l(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"). On December 7, 2012, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), issued a Complaint and Notice of Opportunity for Hearing ("the Complaint"), FIFRA-02-2013-5102, to Respondent. The Complaint alleged that Respondent committed six violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A), involving the sale or distribution in 2012 of the following unregistered

pesticides: “home ‘Z Rice Worm Repellent” (insect repellent), “Trista Melamine Sponge” (antibacterial product), “Killpop Mat (mosquito & insect repellent),” “Laundry Soap”(antibacterial product), “Basic Baby B & B Feeding Bottle Cleanser” (antibacterial product) and “Smart Blue Fresh (antibacterial product).” Additionally, the Complaint alleged that the Respondent committed six violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E), involving the sale or distribution of each of the above products as misbranded pesticides. Finally, the Complaint alleged six violations of importation of pesticide products in 2011 without filing of a Notice of Arrival Form with EPA.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement/Final Order (“CA/FO”) pursuant to 40 C.F.R. Sections 22.18(b)(2) and (3) of the CROP, is an appropriate means of resolving this matter without litigation.

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Daifuku Trading Corp., a New York corporation.
2. Respondent is a "person" as that term is defined in FIFRA Section 2(s), 7 U.S.C. Section 136(s), and is subject to FIFRA and the regulations promulgated thereunder.
3. Respondent is a “distributor or seller” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).

4. Respondent is a “wholesaler,” “dealer,” “retailer,” or “other distributor” within the meaning of Section 14 (a)(1) of FIFRA, 7 U.S.C. Section 136l(a)(1).
5. Respondent maintained and/or operated two “establishments” as defined in Section 2 (dd) of FIFRA, 7 U.S.C. Section 136(dd), located at 360 South Van Brunt Street, Englewood, New Jersey (“Englewood Facility”) and 31-85 Whitestone Expressway, Flushing, New York (“Flushing Facility”).
6. Section 2(t) of FIFRA, 7 U.S.C. Section 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.
7. Section 2(u) of FIFRA, 7 U.S.C. Section 136(u), defines the term “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
8. Pursuant to Section 3 of FIFRA, 7 U.S.C. Section 136a, all pesticides intended for distribution or sale must be registered with EPA.
9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 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 with EPA.

10. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. Section 136(q)(1)(E), states that a pesticide is misbranded if any word, statement, or other information required to appear on the label is not likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
11. 40 C.F.R. Section 156.10(a)(1) (Contents of the label) states that all pesticide products shall bear a label containing the following information: the name of the product, name and address of producer or registrant or person for whom the product was produced, net weight or measure of contents, product registration number, producer establishment number, ingredient statement, hazard and precautionary statement, directions for use and use classifications.
12. 40 C.F.R. Section 156.10(a)(3) (Language to be used) states that all pesticide products shall bear required labeling text in the English language.
13. Pesticide products are misbranded if the labeling requirements specified in 40 C.F.R. Sections 156.10(a)(1) & (a)(3) are not met.
14. 40 C.F.R. Section 156.10(a)(5)(ix) and (x) states that claims as to the safety of the pesticide or its ingredients, including statements such as “safe” and “harmless” are false and misleading statements which constitute misbranding.

15. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 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 that is misbranded.
16. 19 C.F.R. Section 12.112 requires an importer desiring to import pesticides into the United States to submit EPA Form 3540-1, Notice of Arrival of Pesticides and Devices, to the United States Environmental Protection Agency prior to the arrival of shipment in the United States (hereinafter "Notice of Arrival").
17. On or about February 6, 2012, February 29, 2012, and March 27, 2012 EPA conducted inspections at Respondent's Flushing Facility and/or Englewood Facility.
18. During one or more of the inspections mentioned in paragraph 17, above, EPA's inspectors obtained evidence of the distribution and sale of the following products: "home 'Z Rice Worm repellent," "Trista Melamine Sponge," "Killpop Mat," "Laundry Soap," "Baby Basic B & B Feeding Bottle Cleanser," and "Smart Blue Fresh."
19. The products identified in the paragraph above had claims on their labels that the products were intended for preventing, destroying, repelling or mitigating insects, bacteria, and/or microorganisms, which may be "pests."

20. The products identified in paragraph 18, above, were required to be registered with EPA.
21. The products identified in paragraph 18, above, did not have an EPA registration number on their labels.
22. Respondent's sale or distribution of the unregistered pesticides identified in paragraph 18 above constitute unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).
23. Each of the products identified in paragraph 18, above, were misbranded because they did not bear all the required labeling text in the English language, as required by 40 C.F.R. Section 156.10(a)(3), and the information on the label was not likely to be read and understood by the ordinary individual under customary conditions of purchase and use, as required by Section 2(q)(1)(E) of FIFRA, 7 U.S.C. Section 136(q)(1)(E).
24. The label for the "Baby Basic B & B Feeding Bottle Cleanser" product displayed several claims, including "Safe because it is made of 100% Vegetable Oil," "Safety," "Reliable and safe cleanser," and "... it is a cleanser that is harmless to infants and its cleaning power and harmlessness have been verified by the Korea Apparel Testing and Research Institute."

25. The label for the Baby Basic B & B Feeding Bottle Cleanser is false and misleading pursuant to Section 12(q)(1)(A) of FIFRA, 7 U.S.C. Section 136(q)(a)(1)(A) and 40 C.F.R. Section 156.10(a)(5) (ix)& (x) and therefore this product is a misbranded pesticide.
26. Respondent's sale or distribution of the misbranded pesticides identified in paragraph 18 above constitute unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E).
27. During the March 27, 2012 inspection of the Englewood Facility, EPA staff collected documentary samples showing that Respondent imported the "Laundry Soap," "Baby Basic Bottle Cleanser," "home 'Z Rice Worm repellent" and "Killpop Mat" shipments into the United States in 2011 without filing a Notice of Arrival with EPA.
28. Respondent's importation of the pesticide products identified in paragraph 27 above without filing a Notice of Arrival prior to its arrival into the United States is a violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. Section 136j(a)(2)(N) and 19 C.F.R. Section 12.112.
29. Based on EPA's February 6, 2012, February 29, 2012 and March 27, 2012 inspections of Respondent's establishments and EPA's review of the labels for the

above-mentioned pesticide products, EPA issued a Complaint against the Respondent, alleging that: (1) in 2012 the Respondent distributed or sold unregistered and misbranded pesticides, in violation of Sections 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. Sections 136j(a)(1)(A) and 136j(a)(1)(E); and (2) that in 2011 the Respondent imported pesticide products without filing a required Notice of Arrival form with EPA prior to the pesticide products' arrival in the United States, in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. Section 136j(a)(2)(N), and 19 C.F.R. Section 12.112.

30. On July 24, 2012, EPA issued a Stop Sale, Use or Removal Order ("SSURO") prohibiting the Respondent from selling the pesticide products identified in paragraph 18 above.
31. Following EPA's inspections of Respondent's establishments and the issuance of the SSURO, Respondent informed EPA that it has ceased selling or distributing the above-mentioned unregistered and misbranded pesticides identified in paragraph 18, above. Additionally, Respondent has informed EPA that it has ceased the importation of the pesticide products identified in paragraph 27 above.
32. Respondent has submitted financial information and documentation to EPA demonstrating financial difficulty and supporting the imposition of a civil penalty of Sixty Thousand Dollars (\$60,000.000), as specified in paragraph 2 of the

Consent Agreement. EPA has relied on the accuracy of the financial information submitted by Respondent in negotiating this settlement.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed that:

1. Respondent shall hereafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. Section 136 et seq., and its implementing regulations, including the requirements which prohibit the sale of unregistered and misbranded pesticides and prohibit the importation of pesticide products without filing a Notice of Arrival with EPA prior to the pesticide products' arrival in the United States.

2. Respondent shall pay, by certified check, a civil penalty in the amount of Sixty Thousand Dollars ((\$60,000.00) payable in two separate installments, as indicated in subparagraph a, below, to the "Treasurer of the United States of America" and shall mail each check with the notation of the name and docket number of this case as follows: In the Matter of Daifuku Docket No. FIFRA-02-2013-5102

Each check shall be mailed to:

United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall also send a copy of the payment to both:

Bruce Aber, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866; and

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

Each payment must be received at the above address on or before the due date specified above (the date by which each payment must be received shall hereafter be referred to as its "due date").

- a) The first installment amount of Fifty Thousand dollars (\$50,000.00) must be received at the above address on or before forty-five (45) calendar days after the date of the Regional Administrator's signature of the Final Order at the end of this document (first due date). The second installment amount of Ten Thousand dollars (\$10,000.00) must be received at the above address on or before December 15, 2013 (second due date).

- b) If Respondent fails to pay either of the installments required above, by its due date, Respondent shall also be liable to EPA for an additional stipulated penalty of Five Thousand dollars (\$5,000.00) per month for each month in which full payment has not been made. All stipulated penalties for failure to pay a penalty installment on time are due and payable within thirty (30) calendar days of Respondent's receipt from EPA of a written demand for payment of penalties. All stipulated penalty payments shall be made in accordance with the payment instructions above. Stipulated penalties shall accrue as provided above, regardless of whether EPA has notified Respondent of the violation or has made a demand for payment, but need only be paid upon demand.
- c) Failure to pay the full amount of the penalty, or any stipulated penalty demanded by EPA, according to the above provisions, will result in the referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection or other appropriate action.
- d) If timely payment is not received on or before the due dates, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$25.00 will be assessed for

each thirty (30) calendar days period, or any portion thereof, following the due date in which the balance remains unpaid.

e) A 6% per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the due dates.

3. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent (a) admits the jurisdictional allegations of the Complaint; and (b) neither admits nor denies both the specific factual allegations in the Complaint and EPA's Findings of Fact and Conclusions of Law herein.
4. The civil penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, state or local law.
5. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty and any applicable stipulated penalties herein, and the accuracy of the Respondent's representations and financial information provided concerning its ability to pay the proposed penalty in this proceeding) the civil and administrative claims alleged in the Complaint issued in this case. Nothing herein shall be read to preclude EPA or the

United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

6. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
7. Respondent explicitly and knowingly consents to the assessment of the civil penalties as set forth in this Consent Agreement and agrees to pay the civil penalties in accordance with the terms of this Consent Agreement.
8. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint, this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
9. The Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO; or b) to enforce a judgment relating to this CA/FO.
10. Respondent waives any right it might have to appeal this Consent Agreement and the accompanying Final Order.

11. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.
12. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
13. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, 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 Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.
14. 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.

15. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement and Final Order.
16. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, its officers/officials, agents, authorized representatives and successors or assigns.
17. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.
18. Each party hereto agrees to bear its own costs and fees in this matter.
19. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of Daifuku Trading Corp. FIFRA-02-2013-5102

RESPONDENT:

BY: _____

(Signature)

NAME: _____

Jaeng Gab Kwon

TITLE: _____

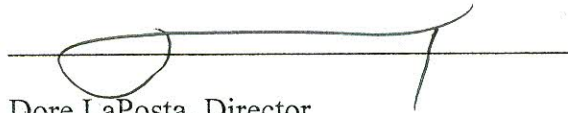
President

DATE: _____

8/9/2013

In the Matter of Daifuku Trading Corp., FIFRA-02-2013- 5102

COMPLAINANT:

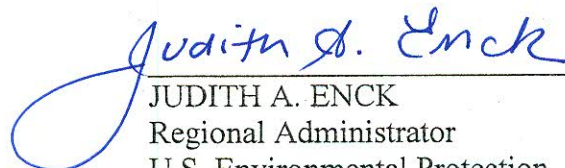
A handwritten signature in black ink, appearing to read 'Dore LaPosta', is written over a horizontal line.

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

DATE: August 12, 2013

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.


JUDITH A. ENCK
Regional Administrator
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, New York 10007

DATE: 8/13/13

In the Matter of Daifuku Trading Corp. FIFRA-02-2013-5102

CERTIFICATE OF SERVICE

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

Original and Copy
By Hand Delivery:

Office of the Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

Copy by Certified Mail/
Return Receipt Requested:

Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
Mail Code 1900 R
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Copy by Certified Mail/
Return Receipt Requested:

Peter Melamed, Esq.
Kim & Bae, P.C.
Attorneys at Law
2160 North Central Road
Suite 303
Fort Lee, New Jersey 07024

Dated: 8/15, 2013
New York, New York