

1 UNITED STATES  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 REGION IX  
4 75 HAWTHORNE STREET  
5 SAN FRANCISCO, CA 94105

2014 AUG -7 PM 1: 58  
US EPA - REGION IX  
HEARING CLERK

6 In the Matter of: ) Docket No. FIFRA-09-2014- 0008  
7 WalkFit, LLC, WalkFit Platinum, LLC, and )  
8 Ideal Products, LLC, ) CONSENT AGREEMENT AND  
9 Respondents. ) FINAL ORDER PURSUANT TO  
10 ) 40 C.F.R. §§ 22.13(b) & 22.18(b)

11 I. CONSENT AGREEMENT

12 The United States Environmental Protection Agency, Region IX (“EPA”) and WalkFit,  
13 LLC, WalkFit Platinum, LLC, and Ideal Products, LLC (“Respondents”) agree to settle this  
14 matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”). This  
15 CAFO simultaneously initiates and concludes this proceeding in accordance with 40 C.F.R. §§  
16 22.13(b) and 22.18(b).

17 A. AUTHORITY AND PARTIES

18 1. This administrative proceeding is for the assessment of a civil administrative penalty  
19 under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7  
20 U.S.C. § 136l(a), against Respondents for the distribution or sale of an unregistered pesticide in  
21 violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

22 2. Complainant is the Assistant Director of the Water and Pesticides Branch,  
23 Enforcement Division, EPA Region IX, who has been duly delegated the authority to initiate  
24 administrative proceedings under Section 14 of FIFRA and to sign consent agreements settling  
25 such proceedings.

26 3. Respondents are California limited liability companies whose principal offices are  
27 located in Sherman Oaks, California.

28 B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a “person” means any

1 individual, partnership, association, corporation, or any organized group of persons whether  
2 incorporated or not.

3 5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u) provides, in part, that a “pesticide” means  
4 any substance or mixture of substances intended for preventing, destroying, repelling, or  
5 mitigating any pest.

6 6. Section 2(t) of FIFRA, 7 U.S.C. Section 136(t), provides that a “pest” is “any insect,  
7 rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life  
8 or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms  
9 on or in living man or other living animals) which the Administrator declares to be a pest.

10 7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) provides that the term “to distribute or  
11 sell” means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for  
12 shipment, ship, deliver for shipment, release for shipment, or receive and (having so received)  
13 deliver or offer to deliver.

14 8. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any  
15 person in any State to distribute or sell to any person any pesticide that is not registered under  
16 Section 3 of FIFRA.

### 17 C. ALLEGED VIOLATIONS

18 9. Respondents are each a “person,” as that term is defined at Section 2(s) of FIFRA, 7  
19 U.S.C. § 136(s).

20 10. At all times relevant to this CAFO, Respondents “distributed or sold” the product,  
21 WalkFit Platinum Orthotics, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. §  
22 136(gg).

23 11. At all times relevant to this CAFO, the instruction sheet insert for the product,  
24 WalkFit Platinum Orthotics, contained the claims that the orthotics were “made out of a  
25 material containing nano-size silver particles which have antibacterial and antifungal properties”  
26 and “[t]his material inhibits growth of those bacteria and fungi which cause infection, odor and  
27

1 itchiness, such as *Micrococcus Luteus* and *Corynebacteria*.”

2 12. At all times relevant to this CAFO, advertising material for the product, WalkFit  
3 Platinum Orthotics, to retailers contained the claim that the orthotics were “[t]reated with  
4 nanosilver, an antibacterial agent that kills germs and eliminates odors.”

5 13. At all times relevant to this CAFO, the website for the product, WalkFit Platinum  
6 Orthotics, at [www.walkfitplatinum.com](http://www.walkfitplatinum.com) contained the claims that “[p]atented Nano-Silver  
7 technology kills germs and odors on the spot” and “[a]dvanced Nanosilver antibacterial  
8 technology kills germs and odors as you walk.”

9 14. “Bacteria,” “fungi,” “*Micrococcus Luteus*,” “*Corynebacteria*,” and “germs” are  
10 “pests,” as that term is defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

11 15. Therefore, at all times relevant to this CAFO, the product, WalkFit Platinum  
12 Orthotics, was a “pesticide,” as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

13 16. At all times relevant to this CAFO, the pesticide, WalkFit Platinum Orthotics, was  
14 not registered under Section 3 of FIFRA.

15 17. From July 8, 2009 to August 2, 2012, Respondents “distributed or sold” the  
16 pesticide, WalkFit Platinum Orthotics, to numerous individuals and retailers throughout the  
17 United States.

18 18. Each of Respondents’ “distributions or sales” of the pesticide, WalkFit Platinum  
19 Orthotics, from July 8, 2009 to August 2, 2012 constitute a violation of Section 12(a)(1)(A) of  
20 FIFRA, 7 U.S.C. § 136j(a)(1)(A).

21 19. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), as amended by the Civil Monetary  
22 Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, and the Enforcement Response Policy  
23 for FIFRA dated December 2009 provide for a penalty of up to \$7,500 for each violation.

#### 24 D. RESPONDENT’S ADMISSIONS

25 20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
26 Respondents (i) admit that EPA has jurisdiction over the subject matter of this CAFO and over  
27

1 Respondents; (ii) neither admit nor deny the specific factual allegations contained in Section  
2 I.C. of this CAFO; (iii) consent to any and all conditions specified in this CAFO and to the  
3 assessment of the civil administrative penalty under Section I.E. of this CAFO; (iv) waive any  
4 right to contest the allegations contained in this CAFO; and (v) waive the right to appeal the  
5 proposed final order contained in this CAFO.

6 E. CIVIL ADMINISTRATIVE PENALTY

7 21. Respondents agree to the assessment of a penalty in the amount of TWO  
8 HUNDRED AND SEVEN THOUSAND, TWO HUNDRED AND THIRTY-FOUR  
9 DOLLARS (\$207,234) plus interest, paid in thirty-six (36) monthly installments over a three-  
10 year period, as final settlement of the civil claims against Respondents arising under FIFRA, as  
11 alleged in Section I.C. of this CAFO.

12 22. Respondents shall pay each installment of the assessed penalty in accordance with  
13 the payment schedule attached to the CAFO as Attachment A. Each installment of the assessed  
14 penalty shall be paid by **certified or cashier's check**, payable to "Treasurer, United States of  
15 America," or paid by one of the other methods listed below and sent as follows:

16 Regular Mail:

17 U.S. Environmental Protection Agency  
18 Fines and Penalties  
19 Cincinnati Finance Center  
20 PO Box 979077  
21 St. Louis, MO 63197-9000

22 Wire Transfers:

23 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the  
24 following information:

25 Federal Reserve Bank of New York  
26 ABA = 021030004  
27 Account = 68010727  
28 SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

1 Overnight Mail:

2 U.S. Bank  
3 1005 Convention Plaza  
4 Mail Station SL-MO-C2GL  
5 ATTN Box 979077  
6 St. Louis, MO 63101

7 ACH (also known as REX or remittance express):

8 Automated Clearinghouse (ACH) for receiving US currency  
9 PNC Bank  
10 808 17th Street, NW  
11 Washington, DC 20074  
12 ABA = 051036706  
13 Transaction Code 22 – checking  
14 Environmental Protection Agency  
15 Account 31006  
16 CTX Format

17 On Line Payment:

18 This payment option can be accessed from the information below:

19 [www.pay.gov](http://www.pay.gov)

20 Enter “sfo1.1” in the search field

21 Open form and complete required fields

22 If clarification regarding a particular method of payment remittance is needed, contact the EPA  
23 Cincinnati Finance Center at 513-487-2091.

24 Concurrently, a copy of the check or notification that the payment has been made by one of the  
25 other methods listed above, including proof of the date payment was made, shall be sent with a  
26 transmittal letter indicating Respondents’ names, the case title, and the docket number to:

27 Regional Hearing Clerk  
28 Office of Regional Counsel (ORC-1)  
29 U.S. Environmental Protection Agency, Region IX  
30 75 Hawthorne Street  
31 San Francisco, CA 94105

32 Scott McWhorter  
33 SDWA/FIFRA Section (ENF-3-3)  
34 Enforcement Division  
35 U.S. Environmental Protection Agency, Region IX  
36 75 Hawthorne Street  
37 San Francisco, CA 94105

38 23. Payment of the above civil administrative penalty shall not be used by Respondents

1 or any other person as a tax deduction from Respondents' federal, state, or local taxes.

2 24. If Respondents fail to pay in full any installment of the assessed penalty in  
3 accordance with the schedule in Attachment A, then the entire remaining balance of the assessed  
4 penalty shall immediately become due and payable. In addition, Respondents shall pay to EPA  
5 a stipulated penalty of \$500 per day for each day that payment is late, in addition to the assessed  
6 penalty. Stipulated penalties are due and payable upon EPA's written request. Failure to pay in  
7 full the assessed penalty in accordance with Attachment A also may lead to any or all of the  
8 following actions:

9 a.. The debt being referred to a credit reporting agency, a collection agency, or to  
10 the Department of Justice for filing of a collection action in the appropriate United States  
11 District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity,  
12 amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to  
13 review.

14 b. The debt being collected by administrative offset (i.e., the withholding of  
15 money payable by the United States to, or held by the United States for, a person to satisfy the  
16 debt the person owes the Government), which includes, but is not limited to, referral to the  
17 Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C  
18 and H.

19 c. EPA may (i) suspend or revoke Respondents' licenses or other privileges; (ii)  
20 suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA  
21 sponsors or funds; (iii) convert the method of payment under a grant or contract from an  
22 advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-  
23 of-credit. 40 C.F.R. §§ 13.14 and 13.17.

24 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13,  
25 interest, penalty charges, and administrative costs will be assessed against the outstanding  
26 amount that Respondents owe to EPA for Respondents' failure to pay in full the assessed  
27

1 penalty in accordance with Attachment A. Interest will be assessed at an annual rate that is  
2 equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax  
3 and loan account rate) as prescribed and published by the Secretary of the Treasury in the  
4 Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. §  
5 13.12(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. §  
6 13.12(c). Administrative costs for handling and collecting Respondents' overdue debt will be  
7 based on either actual or average cost incurred, and will include both direct and indirect costs.  
8 40 C.F.R. § 13.12(b). In addition, if this matter is referred to another department or agency  
9 (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may  
10 assess its own administrative costs, in addition to EPA's administrative costs, for handling and  
11 collecting Respondents' overdue debt.

#### 12 F. CERTIFICATION OF COMPLIANCE

13 25. In executing this CAFO, Respondents certify that the "antibacterial," "antifungal,"  
14 and "germ-killing" claims have been removed from the instruction sheet, advertising material  
15 and website for WalkFit Platinum Orthotics and that Respondents are not distributing or selling  
16 unregistered pesticides.

#### 17 G. RETENTION OF RIGHTS

18 26. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondents'  
19 liability for federal civil penalties for the violations and facts specifically alleged in Section I.C.  
20 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil  
21 liability for violations of any provision of any federal, state, or local law, statute, regulation,  
22 rule, ordinance, or permit not specifically alleged in Section I.C. of this CAFO; or (ii) any  
23 criminal liability. EPA specifically reserves any and all authorities, rights, and remedies  
24 available to it (including, but not limited to, injunctive or other equitable relief or criminal  
25 sanctions) to address any violation of this CAFO or any violation not specifically alleged in  
26 Section I.C. of this CAFO.

1 27. This CAFO does not exempt, relieve, modify, or affect in any way Respondents'  
2 duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,  
3 and permits.

4 **H. ATTORNEYS' FEES AND COSTS**

5 28. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in  
6 this proceeding.

7 **I. EFFECTIVE DATE**

8 29. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be  
9 effective on the date that the final order contained in this CAFO, having been approved and  
10 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

11 **J. BINDING EFFECT**

12 30. The undersigned representative of Complainant and the undersigned representative  
13 of Respondents each certifies that he or she is fully authorized to enter into the terms and  
14 conditions of this CAFO and to bind the party he or she represents to this CAFO.

15 31. The provisions of this CAFO shall apply to and be binding upon Respondents and  
16 their officers, directors, employees, agents, trustees, authorized representatives, successors, and  
17 assigns.

18  
19 **FOR RESPONDENTS, WALKFIT, LLC, WALKFIT PLATINUM, LLC and IDEAL  
PRODUCTS, LLC:**

20 7-14-14  
21 DATE

Laurie McLaughlin  
22 Laurie McLaughlin  
Counsel for Respondents

23 **FOR COMPLAINANT, EPA REGION IX:**

24 8/5/2014.  
25 DATE

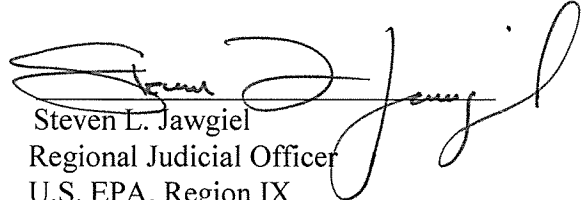
David Wampler  
26 David Wampler  
Acting Assistant Director  
27 Water and Pesticides Branch, Enforcement Division  
U.S. Environmental Protection Agency, Region IX



1 II. FINAL ORDER

2 EPA and Respondents, having entered into the forgoing Consent Agreement,  
3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2014-0008) be  
4 entered and that Respondents shall pay a civil administrative penalty in the amount of  
5 TWO HUNDRED AND SEVEN THOUSAND, TWO HUNDRED AND THIRTY-FOUR  
6 DOLLARS (\$207,234) plus interest in accordance with the terms and conditions set forth in the  
7 Consent Agreement and Attachment A. This CAFO shall become effective upon filing.

8  
9 08/07/14  
DATE

  
Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

**ATTACHMENT A**

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<b>Payment #</b>	<b>Payment</b>	<b>Interest</b>	<b>Principal</b>	<b>Balance</b>
	(due by file date plus)			
1 (30 days)	5,842.12	0.00	5,842.12	201,391.88
2 (60 days)	5,842.12	167.83	5,674.29	195,717.59
3 (90 days)	5,842.12	168.53	5,673.59	190,044.00
4 (120 days)	5,842.12	158.37	5,683.75	184,360.25
5 (150 days)	5,842.12	158.75	5,683.37	178,676.88
6 (180 days)	5,842.12	153.86	5,688.26	172,988.62
7 (210 days)	5,842.12	144.16	5,697.96	167,290.66
8 (240 days)	5,842.12	144.06	5,698.06	161,592.60
9 (270 days)	5,842.12	134.66	5,707.46	155,885.14
10 (300 days)	5,842.12	134.23	5,707.89	150,177.25
11 (330 days)	5,842.12	129.32	5,712.80	144,464.45
12 (360 days)	5,842.12	112.36	5,729.76	138,734.69
13 (390 days)	5,842.12	119.47	5,722.65	133,012.04
14 (420 days)	5,842.12	110.84	5,731.28	127,280.76
15 (450 days)	5,842.12	109.60	5,732.52	121,548.24
16 (480 days)	5,842.12	101.29	5,740.83	115,807.41
17 (510 days)	5,842.12	99.72	5,742.40	110,065.01
18 (540 days)	5,842.12	94.78	5,747.34	104,317.67
19 (570 days)	5,842.12	86.93	5,755.19	98,562.48
20 (600 days)	5,842.12	84.87	5,757.25	92,805.23
21 (630 days)	5,842.12	77.34	5,764.78	87,040.45

1	22 (660 days)	5,842.12	74.95	5,767.17	81,273.28
2	23 (690 days)	5,842.12	69.99	5,772.13	75,501.15
3	24 (720 days)	5,842.12	60.82	5,781.30	69,719.85
4	25 (750 days)	5,842.12	60.04	5,782.08	63,937.77
5	26 (780 days)	5,842.12	53.28	5,788.84	58,148.93
6	27 (810 days)	5,842.12	50.07	5,792.05	52,356.88
7	28 (840 days)	5,842.12	43.63	5,798.49	46,558.39
8	29 (870 days)	5,842.12	40.09	5,802.03	40,756.36
9	30 (900 days)	5,842.12	35.10	5,807.02	34,949.34
10	31 (930 days)	5,842.12	29.12	5,813.00	29,136.34
11	32 (960 days)	5,842.12	25.09	5,817.03	23,319.31
12	33 (990 days)	5,842.12	19.43	5,822.69	17,496.62
13	34 (1020 days)	5,842.12	15.07	5,827.05	11,669.57
14	35 (1050 days)	5,842.12	10.05	5,832.07	5,837.50
15	36 (1080 days)	5,842.04	4.54	5,837.50	0.00
16					
17	TOTALS:	210,316.24	3,082.24	207,234.00	

\*\* Final payment amount adjusted by -0.08 due to rounding.

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CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2014-0008) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 91405, and that a true and correct copy of the same was sent to the following parties:

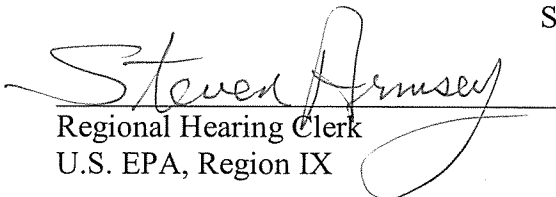
A copy was mailed via CERTIFIED MAIL to:

Mr. Sean W. Bezark  
Greenberg Traurig, LLP  
77 West Wacker Drive, Suite 3100  
Chicago, Illinois 60601

**CERTIFIED MAIL NUMBER: 7012 1640 0001 2190 7977**

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Carol Bussey  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
Regional Hearing Clerk  
U.S. EPA, Region IX

  
Date