

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of:	:
	:
QVC, Inc.	: U.S. EPA Docket No. FIFRA-03-2022-0075
1200 Wilson Drive	:
Studio Park	: Proceeding under Section 14(a) of the
West Chester, PA 19380	: Federal Insecticide, Fungicide, and
	: Rodenticide Act, 7 U.S.C. § 136l(a)
Respondent.	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and QVC, Inc. (“Respondent”) (collectively the “Parties”), pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under FIFRA (or the “Act”) for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(1).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
13. At all times relevant to the violations alleged herein, Respondent was a Delaware corporation with a principal place of business located at 1200 Wilson Drive in West Chester, Pennsylvania.
14. At all times relevant to the violations alleged herein, Respondent was a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
15. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$5,000 for each offense. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,

and the Civil Monetary Penalty Inflation Adjustment Rule promulgated at 40 C.F.R. Part 19, violations of FIFRA which occur or occurred after November 2, 2015 and where penalties are assessed on or after January 12, 2022 are subject to a statutory maximum penalty of \$21,805 per violation. 87 *Fed. Reg.* 1676, 1678 (January 12, 2022).

16. At all times relevant to the violations alleged herein, Respondent was a “wholesaler, dealer, retailer, or other distributor” within the meaning of, and subject to the assessment of a civil penalty under, Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for any violation of FIFRA.
17. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines “device” to mean any instrument or contrivance (other than a firearm) which 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.
18. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “distribute or sell” to mean 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.
19. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), makes it unlawful for any person in any State to distribute or sell to any person any device which is misbranded.
20. FIFRA implementing regulations at 40 C.F.R. § 152.500(b)(1) make clear that devices are subject to the requirements set forth in Section 2(q)(l) of FIFRA, 7 U.S.C. § 136(q)(1), and 40 C.F.R. Part 156 with respect to labeling.

Counts I-III - Distribution or Sale of Misbranded Devices
Bell+Howell Ultrasonic Plug-In Pest Repeller

21. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
22. On or about June 14, 2020, QVC imported products from China into the Port of Norfolk-Newport News, Virginia with the brand name *Bell+Howell Ultrasonic Plug-In Pest Repeller* under Entry Numbers: 113-88552678, 113-88552827, and 113-88552975 that were intended to be further distributed to individuals, associations, partnerships, corporations, or other organized groups of persons.
23. The pesticidal claims, statements or implications included in the labeling for the *Bell+Howell Ultrasonic Plug-In Pest Repeller* product render it a “device” as defined by Section 2(h) of FIFRA, 7 U.S.C. § 136(h).
24. Respondent’s conduct described in Paragraph 22 with respect to each entry of the *Bell+Howell Ultrasonic Plug-In Pest Repeller* product constitutes a “distribution or sale” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

25. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), defines a pesticide as being “misbranded” if its label does not bear the registration number assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which it was produced.
26. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), defines a pesticide as being “misbranded” if any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
27. FIFRA implementing regulations at 40 C.F.R. §§ 156.10(a)(1)(v) and (f) require that EPA establishment registration numbers must be shown clearly and prominently on labeling and must appear on the wrapper or outside container of the package if the number on the immediate container cannot be clearly read through such wrapper or container.
28. While each individual *Bell+Howell Ultrasonic Plug-In Pest Repeller* device was produced in an EPA-registered establishment in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and displayed the establishment registration number on the device, the immediate containers of the devices imported by Respondent were brown cardboard boxes that lacked the establishment registration number, rendering them “misbranded” within the meaning of Sections 2(q)(1)(D) and (E) of FIFRA, 7 U.S.C. §§ 136(q)(1)(D) and (E).
29. Each occasion that Respondent imported one or more units of the *Bell+Howell Ultrasonic Plug-In Pest Repeller* device constitutes a distribution or sale of a misbranded device to a person within the meaning of, and a separate unlawful act under, Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count IV-V - Distribution or Sale of Misbranded Devices
UV-C Wand Portable UV-C Sterilizer

30. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
31. On or about November 24, 2020, QVC imported products from China into the Port of Norfolk-Newport News, Virginia with the brand name *UV-C Wand Portable UV-C Sterilizer* under Entry Numbers: 113-90703087 and 113-90701305 that were intended to be further distributed to individuals, associations, partnerships, corporations, or other organized groups of persons.
32. The pesticidal claims, statements or implications included in the labeling for the *UV-C Wand Portable UV-C Sterilizer* product render it a “device” as defined by Section 2(h) of FIFRA, 7 U.S.C. § 136(h).

33. Respondent's conduct described in Paragraph 31 with respect to each entry of the *UV-C Wand Portable UV-C Sterilizer* product constitutes a "distribution or sale" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
34. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as being "misbranded" if its labeling bears any statement, design, or graphic representation that is false or misleading in any particular.
35. FIFRA implementing regulations at 40 C.F.R. § 156.10(a)(5)(ii) specifically identifies "[a] false or misleading statement concerning the effectiveness of the product as a pesticide or device" as an example of a statement or representation that constitutes misbranding.
36. The labeling for the *UV-C Wand Portable UV-C Sterilizer* devices made claims that they were capable of sterilization that were not supported by test data and therefore were false or misleading, rendering the devices "misbranded" as defined by Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), as, consistent with the definition set forth at 40 C.F.R. § 158.2203, EPA considers the term "sterilant" to mean the destruction or elimination of all forms of microbial life in the inanimate environment, including all forms of vegetative bacteria, bacterial spores, fungi, fungal spores, and viruses.
37. Each occasion that Respondent imported one or more units of the *UV-C Wand Portable UV-C Sterilizer* device constitutes a distribution or sale of a misbranded device to a person within the meaning of, and a separate unlawful act under, Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count VI - Distribution or Sale of Misbranded Devices
FS – Hy Genie UVC Large Sanitizing Bag

38. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
39. On or about March 19, 2021, QVC imported products from China into the Port of Norfolk-Newport News, Virginia with the brand name *FS – Hy Genie UVC Large Sanitizing Bag* under Entry Number: 113-94132168 that were intended to be further distributed to individuals, associations, partnerships, corporations or other organized groups of persons.
40. The pesticidal claims, statements or implications included in the labeling for the *FS – Hy Genie UVC Large Sanitizing Bag* product render it a device as defined by Section 2(h) of FIFRA, 7 U.S.C. § 136(h).
41. Respondent's conduct described in Paragraph 39 with respect to the entry of the *FS – Hy Genie UVC Large Sanitizing Bag* product constitutes a "distribution or sale" within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

42. FIFRA implementing regulations at 40 C.F.R. § 156.10(a)(5)(ix) specifically identify “[c]laims as to the safety of the pesticide or its ingredients, including statements such as ‘safe’” as an example of statements or representations that constitutes misbranding.
43. The labeling for the *UV FS – Hy Genie UVC Large Sanitizing Bag* devices made false or misleading claims that they delivered “safe, fast, effective sanitization” rendering the devices “misbranded” as defined by Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).
44. Each occasion that Respondent imported one or more units of the *UV FS – Hy Genie UVC Large Sanitizing Bag* device constitutes a distribution or sale of a misbranded device to a person within the meaning of, and a separate unlawful act under, Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

CIVIL PENALTY

45. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of *FOURTEEN THOUSAND ONE HUNDRED AND SIXTY DOLLARS* (\$14,160), which Respondent shall be liable to pay in accordance with the terms set forth below.
46. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), including, the following: the size of Respondent’s business, the effect of the penalty on Respondent’s ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s December 2009 *FIFRA Enforcement Response Policy* which reflects the statutory penalty criteria and factors set forth at Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.
47. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier’s check, certified check or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall include reference to Respondent’s name and address, and the Docket Number of this action, *i.e.*, Docket No: FIFRA-03-2022-0075;
 - b. All checks shall be made payable to the “United States Treasury”;

- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Jennifer M. Abramson
Senior Assistant Regional Counsel
Abramson.Jennifer@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

- 48. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
- 49. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
- 50. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest

begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).

51. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
52. LATE PAYMENT PENALTY: A late payment penalty of six percent 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). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
53. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
54. The Parties consent to service of the Final Order by e-mail at the following valid email addresses: Abramson.Jennifer@epa.gov (for Complainant), and GTrego@mankogold.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

55. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
56. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission, true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

57. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

58. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the FIFRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

59. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

60. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

61. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

62. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: QVC, INC.

Date: May 5, 2022

By: *Eve DelSoldo*
Eve DelSoldo
QVC Vice President and General Counsel

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[Digital Signature and Date]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[Digital Signature and Date]
Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. EPA – Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

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West Chester, PA 19380	: Federal Insecticide, Fungicide, and
	: Rodenticide Act, 7 U.S.C. § 136l(a)
Respondent.	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, QVC, Inc. have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s December 2009 *FIFRA Enforcement Response Policy*, and the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

NOW, THEREFORE, PURSUANT TO Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **FOURTEEN THOUSAND ONE HUNDRED AND SIXTY DOLLARS (\$14,160)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: _____

By: _____

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

