



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
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REPLY TO THE ATTENTION OF:

C-14J

April 5, 2012

Honorable Susan L. Biro
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1099 14th Street, NW, Suite 350
Franklin Court
Washington, D.C. 20005

Re: **In the Matter of Liphatech, Inc.**
Docket No. FIFRA-05-2010-0016

Dear Chief Judge Biro:

Enclosed please find a copy of *Complainant's Response in Opposition to Respondent's Motion to Conform Transcript*, which was filed on April 5, 2012, in the above-referenced matter.

Sincerely,

Gary E. Steinbauer
Assistant Regional Counsel

Enclosures

cc: Mr. Steven Sarno
Office of Administrative Law Judges
U.S. Environmental Protection Agency
(via Email)

Mr. Mark A. Cameli
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(via UPS overnight delivery and via Email)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Liphatech, Inc.)
Milwaukee, Wisconsin)
Respondent.)
_____)

Docket No. FIFRA-05-2010-0016
Hon. Susan L. Biro

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**COMPLAINANT'S RESPONSE IN OPPOSITION TO
RESPONDENT'S MOTION TO CONFORM TRANSCRIPT**

Pursuant to 40 C.F.R. §§ 22.16(b) and 22.25 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits*, the Director, Land and Chemicals Division, Region 5, United States Environmental Protection Agency ("Complainant") respectfully submits this Response in Opposition to Respondent's Motion to Conform Transcript.

In its motion, Respondent proposes two changes and contends that making these changes "will conform the transcript to the actual testimony presented at hearing." (Resp.'s Mot. at 2). Complainant respectfully disagrees.

Respondent proposes that the words "involve making" in page 158, line 22 of the transcript of Mr. John Hebert's testimony on February 8, 2012 be changed to "do not involve." This change is proposed to a question by Respondent's counsel to Mr. Hebert. The full question by Respondent's counsel to Mr. Hebert in which this change is proposed was transcribed as follows:

Q. Those statements in the ECR involve making a determination as to whether claims made in that research bulletin are, quote, "substantially different," close quote; isn't that correct?

(2/8/12 Hebert Tr. at 158:22-25). The transcribed answer by Mr. Hebert is: "It looks like, yes, that's correct." (*Id.* at 159:1). Complainant has consulted with Mr. Hebert about this proposed change and Mr. Hebert recalls the question being asked as originally transcribed.

In addition, Respondent proposes that the word "didn't" be stricken from page 23, line 21 of the transcript of Ms. Claudia Niess's testimony. This change is proposed to the portion of the transcript containing Respondent's opening statement. The entire sentence in which this change is proposed was transcribed as follows: "So because the complainant can't show that the website didn't offer to sell Rozol, the complainant can't show that sale or distribution occurred for purposes of Counts 2,184 to 2,231, in addition to those earlier reasons I mentioned." (2/7/12 Niess Tr. at 23:20-24). Complainant cannot recall whether the word "didn't" was used in this sentence at this part of the hearing. Furthermore, removing the word "didn't" in this sentence would render the sentence grammatically incorrect.

For all of the foregoing reasons, Complainant respectfully requests that the Presiding Officer enter an order denying Respondent's Motion.

Respectfully submitted,



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In the Matter of Liphatech, Inc.
Docket No. FIFRA-05-2010-0016

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CERTIFICATE OF SERVICE

I hereby certify that the original and one true, accurate and complete copy of the *Complainant's Response in Opposition to Respondent's Motion to Conform Transcript* were filed with the Regional Hearing Clerk, U.S. EPA, Region 5, on the date indicated below. True, accurate and complete copies also were sent to the persons listed and in the manner provided below on this date:

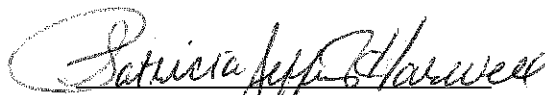
Sent via UPS overnight delivery:

Honorable Susan L. Biro
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1099 14th Street, NW, Suite 350
Franklin Court
Washington, D.C. 20005

Sent via UPS overnight delivery:

Mr. Mark A. Cameli
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

Dated in Chicago, Illinois, this 5 day of April, 2012.



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