



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Hearing Clerk

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SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

From: David Cobb
Section Chief, Toxics Enforcement Unit
Enforcement and Compliance Assurance Division

DAVID COBB

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DAVID COBB
Date: 2021.03.29
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To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Port of Denver, Colorado 3307

Subject: Requested action to be taken regarding the PhoneSoap 3 and HomeSoap in shipment with entry number 799-15051303 FIFRA-08-2021-0037

By this memorandum, the U.S. Environmental Protection Agency, Region 8, is informing the Bureau of Customs and Border Protection of the U.S. Department of Homeland Security that the PhoneSoap 3 and HomeSoap in the import shipment described below should be **Denied Entry-Refused Delivery** into the United States pursuant to the authority of section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. section 12.114. The entry was marked "Hold Intact," "Refused," and "Re-Export" in ACE by the EPA on March 29, 2021.

The following information pertains to the shipment of the PhoneSoap 3 and HomeSoap:

- The importer and consignee is Otter Products LLC, 760 SE Frontage Road, Fort Collins, Colorado, 80524-8315, email contact Casey Grace, casey.grace@otterproducts.com.
- The manufacturer is Aomaga Vietnam Electronic Company Limited TT, TS5 RD Tien Son Industrial Park OTU Son Town, Vietnam.
- The broker is Fedex Trade Networks, email contact, DEN_Brokerage@ftn.fedex.com.
- The EPA Establishment Number as listed in ACE for both the HomeSoap and the PhoneSoap 3 is 093719VTM001.
- The bill number is ONEYHANB03909600.
- The entry number is 799-15051303.
- The ship date was March 1, 2021.
- The quantity is 172 units of HomeSoap, weighing 1,289 pounds, 672 units of black PhoneSoap 3, weighing 1185 pounds, 624 units of white PhoneSoap 3, weighing 1,101 pounds.
- The port of entry is Denver, Colorado 3307.
- The country of origin as entered in ACE is Vietnam.

Section 2(t) of FIFRA, 7 U.S.C. § 136(t) defines “pest” as “(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 136w(c)(1) of this title.”

Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines “device” as “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.

Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers” and defines “labeling” in part, as “all labels and all other written, printed, or graphic matter – (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide....”

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;
- (B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 136w(c)(3) of this title;
- (C) it is an imitation of, or is offered for sale under the name of, another pesticide;
- (D) its label does not bear the registration number assigned under section 7 to each establishment in which it was produced;
- (E) any word, statement, or other information required by or under the authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared to 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;
- (F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment; [or]
- (G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment[.]”

In accordance with 40 C.F.R. § 156.10(a)(5), a pesticide or a device 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:

- A false or misleading statement concerning the effectiveness of the product as a pesticide or device. 40 C.F.R. § 156.10(a)(5)(ii).
- A false or misleading comparison with other pesticides or devices. 40 C.F.R. § 156.10(a)(5)(iv).

- Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of the Federal Government. 40 C.F.R. § 156.10(a)(5)(v).
- A true statement used in such a way as to give a false or misleading impression to the purchaser. 40 C.F.R. § 156.10(a)(5)(vii).
- Claims 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”. 40 C.F.R. § 156.10(a)(5)(ix).

40 C.F.R § 152.500 provides requirements for devices, stating:

(a) A device is defined as any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than a bacterium, virus, or other microorganism on or in living man or living animals) but not including equipment used for the application of pesticides (such as tamper-resistant bait boxes for rodenticides) when sold separately therefrom.

(b) A device is not required to be registered under FIFRA sec. 3. The Agency has issued a policy statement concerning its authority and activities with respect to devices, which was published in the Federal Register of November 19, 1976 (41 FR 51065). A device is subject to the requirements set forth in:

- (1) FIFRA sec. 2(q)(1) and part 156 of this chapter, with respect to labeling;
- (2) FIFRA sec. 7 and part 167 of this chapter, with respect to establishment registration and reporting;
- (3) FIFRA sec. 8 and part 169 of this chapter, with respect to books and records;
- (4) FIFRA sec. 9, with respect to inspection of establishments;
- (5) FIFRA sec. 12, 13, and 14, with respect to violations, enforcement activities, and penalties;
- (6) FIFRA sec. 17, with respect to import and export of devices;
- (7) FIFRA sec. 25(c)(3), with respect to child-resistant packaging; and
- (8) FIFRA sec. 25(c)(4), with respect to the Agency's authority to declare devices subject to certain provisions of the Act.

Section 12(a)(1)(F) of FIFRA, 7 U.S.C. 136j(a)(1)(F) provides that it shall be unlawful for any person in any State to distribute or sell to any person any device which is misbranded.

The HomeSoap products that arrived at the border for import in the shipment listed above had an establishment number of 93719-VTM-1 listed on the box and an establishment number of 93719-UT-1 listed on the device. These pesticide devices did not bear accurate establishment numbers and were misbranded under FIFRA section 2(q)(1)(E), 7 U.S.C. 136(q)(1)(E).

The shipment of HomeSoap that arrived at the border for import had labeling with the following language:

- “Safely achieve a 99.99% disinfection in just 10 minutes by using chemical and heat free UV-C light.”

- “More than just your phone...Increased capacity lets you sanitize even more household items: tablets, remote controls, baby bottles, headphones, game controllers, and more.”
- “Close door to begin disinfection cycle. After 10 minutes remove freshly sanitized object.”

These HomeSoap products are misbranded pursuant to 7 U.S.C. § 136(q)(1) and 40 C.F.R. § 156.10(a)(5), because they contain statements that are false or misleading as defined by the regulation.

The shipment of PhoneSoap 3 that arrived at the border for import had labeling with the following language:

- “Safely achieve a 99.99% disinfection in just 10 minutes by using chemical and heat free UV-C light.”
- “When indicator light turns off, item is sanitized.”
- “Where germs go to die.”

These PhoneSoap 3 products are misbranded pursuant to 7 U.S.C. § 136(q)(1) and 40 C.F.R. § 156.10(a)(5), because they contain statements that are false or misleading as defined by the regulation.

Importing the shipment referenced above is a violation of FIFRA section 12(a)(1)(F), 7 U.S.C. § 136j(a)(1)(F), as a distribution or sale of a misbranded device.

Therefore, the HomeSoap and the PhoneSoap 3 products in the shipment referenced above cannot be allowed entry into the United States.

The Agency hereby notifies U.S. Customs and Border Protection that this merchandise has been refused admission and recommends that this merchandise be re-exported or destroyed within 90 calendar days from the date of this Notice.

On March 29, 2021, the Customs and Border Patrol unit chief in Denver, Colorado, was informed by the EPA that it would deny entry of this shipment.

Please contact Christine Tokarz, the import enforcement coordinator, by phone at (303) 312-6147 or by email at tokarz.christine@epa.gov if you have any questions concerning this matter.