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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

_____)	Docket No. FIFRA-09-2009-0013
In the Matter of:)	
Bug Bam Product, LLC; and)	FIRST AMENDED COMPLAINT AND
Flash Sales, Inc.)	NOTICE OF OPPORTUNITY
)	FOR HEARING
Respondents)	
_____)	

AUTHORITY AND PARTIES

This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against Bug Bam Products, LLC and Flash Sales, Inc., for the sale and distribution of unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division, United States Environmental Protection Agency ("EPA"), Region IX. The

Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1, dated June 9, 2005.

Respondents are Bug Bam Products, LLC (“Bug Bam”) and Flash Sales, Inc. (“Flash Sales”).

GENERAL ALLEGATIONS

1. Bug Bam, a California corporation, is a “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
2. Flash Sales, a Florida corporation, is a “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
3. Bug bam has an office located at 414 2nd street, Suite 241, Hermosa Beach, California 90254-4673.
4. Flash Sales has an office located at 4401 NW 167th Street, Miami, Florida 33055.
5. Respondents collectively distribute or sell insect repellent products.
6. The products distributed or sold by Respondents are “Bug Bam Insect Repelling Wristband,” “Bug Bam for Kids Insect Repelling Wristband” and “Bug Bam Insect Repelling Grid” (the “Bug Bam Products”).
7. “Bug Bam Insect Repelling Wristband,” “Bug Bam for Kids Insect Repelling Wristband”

- and “Bug Bam Insect Repelling Grid” (the “Bug Bam Products”) each claim to repel mosquitoes.
8. Mosquitoes are “pests” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
 9. A “pesticide” means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3(s).
 10. “Bug Bam Insect Repelling Wristband,” “Bug Bam for Kids Insect Repelling Wristband” and “Bug Bam Insect Repelling Grid” are “pesticides” as defined by 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3(s) in that they are substances or mixtures of substances intended for preventing, destroying, repelling, or mitigating “pests.”
 11. At all times relevant to this action, “Bug Bam Insect Repelling Wristband,” “Bug Bam for Kids Insect Repelling Wristband” and “Bug Bam Insect Repelling Grid” were not registered with EPA.
 12. 40 C.F.R. § 152.25(f) exempts products containing certain active and inert ingredient if all of the following conditions of exemption are met: each product (1) must contain active ingredients listed under 40 C.F.R. § 152.25(f)(1); (2) must contain inert ingredients in the most current List 4A or listed under 40 C.F.R. § 180.950; (3) must bear a label identifying the name and percentage (by weight) of each active ingredient and must name each inert ingredient; (4) must not bear claims either to control or mitigate microorganisms that pose a threat to human health or claims to control insects or rodents carrying specific diseases; (5) and must not include false and misleading statements.
 13. EPA maintains a list of approved inert ingredients for 40 C.F.R. § 152.25(f) exemption purposes at

40 C.F.R. § 180.950 and www.epa.gov/opprd001/inerts/section25b_inerts.pdf.

14. On or about February 25, 2009, the packaging for “Bug Bam for Kids Insect Repelling Wristband” and “Bug Bam Insect Repelling Grid” listed as the active ingredients “pure essential oils including citronella,” and did not individually list each active ingredient.
15. On or about February 25, 2009, the Bug Bam Products used a red colorant which was not listed on the package and is not “red cabbage color, expressed from edible red cabbage heads via a pressing process using only acidified water.”
16. On or about February 25, 2009, the packaging for “Bug Bam for Kids Insect Repelling Wristband” and “Bug Bam Insect Repelling Grid” listed thermoplastic elastomers, or TPE, as an inert ingredient.
17. The red colorant and TPE used by Respondents in the Bug Bam Products identified in Paragraphs 16 and 17 are not listed on the most current List 4A or under 40 C.F.R. § 180.950.
18. On or about February 25, 2009, Bug Bam claimed that the Bug Bam Products protect users from specific diseases carried by mosquitoes.
19. On or about February 25, 2009, Bug Bam claimed that the Bug Bam Products were “comprised of EPA approved ingredients,” contained “EPA/FDA GRAS [Generally Recognized as Safe] approved ingredients”, and that the products were scientifically proven to be an effective mosquito repellent.
20. On or about February 25, 2009, for the reasons set forth in Paragraphs 14-19, “Bug Bam Insect Repelling Wristband,” “Bug Bam for Kids Insect Repelling Wristband,” and “Bug Bam Insect Repelling Grid” did not meet the requirements to be classified as minimum

risk pesticides as defined by 40 C.F.R. § 152.25(f).

21. To “distribute or sell” means to “distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receiving and (having so received) deliver or offer to deliver.” 7 U.S.C. § 136(gg).
22. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any unregistered pesticide.

ALLEGED VIOLATIONS

Sale or Distribution of Unregistered Pesticides, 7 U.S.C. § 136j(a)(1)(A).

COUNT 1

23. Paragraphs 1 through 22 are realleged and incorporated herein by reference.
24. On or about February 25, 2009, an employee of EPA identified as Frank Carpenter, accessed the website www.bugbam.com where he purchased the product “Bug Bam Insect Repelling Wristband.”
25. The website bugbam.com was registered to, administered by, and/or under the control of Bug Bam on or about February 25, 2009.
26. The website bugbam.com offered for sale the product “Bug Bam Insect Repelling Wristband” on or about February 25, 2009.
27. On or about February 25, 2009, Flash Sales was acting as the sales distributor for the Bug Bam product “Bug Bam Insect Repelling Wristband.”
28. Flash Sales sent the product “Bug Bam Insect Repelling Wristband” via mail to Mr. Carpenter after the purchase of the item on the bugbam.com website on or about February 25, 2009.

29. As a result, on or about February 25, 2009, Respondents jointly distributed or sold “Bug Bam Insect Repelling Wristband.”
30. Respondents’ sale or distribution of “Bug Bam Insect Repelling Wristband,” an unregistered pesticide, constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 2

31. Paragraphs 1 through 22 are realleged and incorporated herein by reference.
32. On or about February 25, 2009, an employee of EPA identified as Frank Carpenter, accessed the website www.bugbam.com where he purchased the product “Bug Bam for Kids Insect Repelling Wristband.”
33. The website bugbam.com was registered to, administered by, and/or under the control of Bug Bam on or about February 25, 2009.
34. The website bugbam.com offered for sale the product “Bug Bam for Kids Insect Repelling Wristband” on or about February 25, 2009.
35. On or about February 25, 2009, Flash Sales was acting as the sales distributor for the Bug Bam product “Bug Bam for Kids Insect Repelling Wristband.”
36. Flash Sales sent the product “Bug Bam for Kids Insect Repelling Wristband” via mail to Mr. Carpenter after the purchase of the item on the bugbam.com website on or about February 25, 2009.
37. As a result, on or about February 25, 2009, Respondents jointly distributed or sold “Bug Bam for Kids Insect Repelling Wristband.”
38. Respondents’ sale or distribution of “Bug Bam for Kids Insect Repelling Wristband,” an

unregistered pesticide, constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 3

39. Paragraphs 1 through 22 are realleged and incorporated herein by reference.
40. On or about February 25, 2009, an employee of EPA identified as Frank Carpenter, accessed the website www.bugbam.com where he purchased the product "Bug Bam Insect Repelling Grid."
41. The website bugbam.com was registered to, administered by, and/or under the control of Bug Bam on or about February 25, 2009.
42. The website bugbam.com offered for sale the product "Bug Bam Insect Repelling Grid" on or about February 25, 2009.
43. On or about February 25, 2009, Flash Sales was acting as a sales distributor for the Bug Bam product "Bug Bam Insect Repelling Grid."
44. Flash Sales sent the product "Bug Bam Insect Repelling Grid" via mail to Mr. Carpenter after the purchase of the item on the bugbam.com website on or about February 25, 2009.
45. As a result, on or about February 25, 2009, Respondents jointly distributed or sold "Bug Bam Insect Repelling Grid."
46. As a result, on or about February 25, 2009, Respondents distributed or sold "Bug Bam Insect Repelling Grid."
47. Respondents' sale or distribution of "Bug Bam Insect Repelling Grid," an unregistered pesticide, constitutes a violation of Section 12(a)(1)(A) of FIFRA.

PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. ' 136l(a)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the assessment of a civil administrative penalty of up to \$7,500 for each violation of FIFRA occurring after January 12, 2009. For purposes of determining the amount of the civil penalty to be assessed, FIFRA Section 14(a)(4) requires EPA to consider the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violations alleged. Based on the violations alleged in this Complaint, and after consideration of the statutory factors enumerated above, EPA proposes to assess the following civil penalty jointly and severally against the Respondents pursuant to FIFRA Section 14(a) and the FIFRA Enforcement Response Policy dated July 2, 1990 (a copy of which is enclosed with this Complaint), which provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above:

Count 1 (Sale and/or distribution of an unregistered pesticide, violating Section 12(a)(1)(A) of FIFRA, 7 U.S.C. ' 136j(a)(1)(A))	\$5,099
Count 2 (Sale and/or distribution of an unregistered pesticide, violating Section 12(a)(1)(A) of FIFRA, 7 U.S.C. ' 136j(a)(1)(A))	\$5,099
Count 3 (Sale and/or distribution of an unregistered pesticide, violating Section 12(a)(1)(A) of FIFRA, 7 U.S.C. ' 136j(a)(1)(A))	\$5,099
TOTAL (after rounding to nearest \$100)	\$15,300

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Administrative Hearing

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Renovation or Suspension of Permits ("Consolidated Rules of Practice"), 40

C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint.

Under these rules, you have the right to request a hearing. Any request for a hearing must be in writing and must be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California within thirty (30) days of receipt of this Complaint. In the event that you intend to request a hearing to contest any material facts set forth in the Complaint, to dispute the amount of the penalty proposed in the Complaint, or to assert a claim for judgment as a matter of law, you must file a written Answer to this Complaint with the Regional Hearing Clerk at the above address within thirty (30) days of receipt of this Complaint. A copy of your Answer should also be sent to:

Ivan Lieben
Assistant Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

Your Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) a concise statement of the facts which you intend to place at issue in the hearing; and (3) whether a hearing is requested. Hearings held in the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules of Practice. 40 C.F.R. Part 22.

If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, such failure shall constitute an admission of all facts alleged in the

Complaint and a waiver of your right to a hearing under Section 113(d)(2). The proposed penalty shall become due and payable by you without further proceedings sixty (60) days after a final order issued upon default.

Settlement Conference

EPA encourages all parties against whom civil penalties are proposed to pursue the possibilities of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with the Agency concerning the alleged violations or the amount of the proposed penalty. You may wish to appear at the conference yourself or be represented by counsel. If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA, Region IX. The issuance of such Consent Agreement and Final Order shall constitute a waiver of your right to request a hearing of any matter stipulated to therein.

To explore the possibility of settlement in this matter, address your correspondence to:

Ivan Lieben
Assistant Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

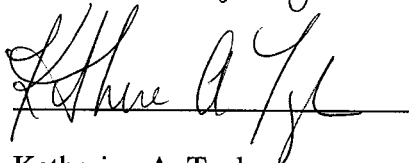
His telephone number is (415) 972-3914.

Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, you may choose to pay the proposed penalty. In order to do this, please contact Mr. Ivan Lieben to arrange for the preparation of a Consent Agreement and Final Order.

After this Complaint is issued, the Consolidated Rules of Practice prohibit ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief

Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

Dated at San Francisco, California on this 28 day of January, 2009.

A handwritten signature in cursive script, appearing to read "Katherine A. Taylor", written over a horizontal line.

Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division
USEPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Amended Complaint and Notice of Opportunity for Hearing was hand delivered to:

The Regional Hearing Clerk
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

and that a true and correct copy of the Amended Complaint; the Consolidated Rules of Practice, 40 C.F.R. Part 22; and the FIFRA Enforcement Response Policy were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Joseph Symond
President
Bug Bam Products, LLC
414 2nd street, Suite 241
Hermosa Beach, California 90254-4673

Jacob Levy
President
Flash Sales, Inc.
4401 NW 167th St.
Miami, Florida 33055

Dated: 1/28/10

By: 

William B. Lee
U.S. Environmental Protection Agency, Region IX

CERTIFICATION OF SERVICE

I, William B. Lee, hereby certify that on January 28, 2010, I sent the original of the foregoing First Amended Complaint and Notice of Opportunity for Hearing regarding Bug Bam Products, LLC. And Flash Sales, Inc. to the following via US Mail:

Honorable Barbara A. Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Franklin Court, Suite 350
1099 14th St. NW
Washington, DC 20005



William B. Lee