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REG. CLERK  
REGIONAL HEARING CLERK

Attorneys for Plaintiff

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

In the Matter of:	)	Docket No. FIFRA-09-2009- <u>0013</u>
	)	
Bug Bam Product, LLC,	)	COMPLAINT AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
Respondent	)	
	)	

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 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.

Respondent is Bug Bam Products, LLC (“Respondent”).

#### GENERAL ALLEGATIONS

1. Respondent, 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. Respondent has a place of business located at 2104 Monterey Boulevard, Hermosa Beach, California 90254-2630.
3. “Bug Bam Insect Repelling Wristband,” “Bug Bam for Kids Insect Repelling Wristband” and “Bug Bam Insect Repelling Grid” all claim to repel mosquitoes.
4. Mosquitoes are “pests” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
5. 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).
6. “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.”

7. 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.
8. At all times relevant to this action, Respondent made claims that Bug Bam products protect users from specific diseases carried by mosquitoes.
9. As a result, “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).
10. 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

11. Paragraphs 1 through 10 are realleged and incorporated herein by reference.
12. On or about February 25, 2009, an employee of EPA identified as Frank Carpenter, accessed the website [www.bugbam.com](http://www.bugbam.com) where he purchased the product “Bug Bam Insect Repelling Wristband.”
13. The website [bugbam.com](http://bugbam.com) was registered to, administered by, and under the control of Respondent on or about February 25, 2009.
14. As a result, on or about February 25, 2009, Respondent distributed or sold “Bug Bam Insect Repelling Wristband.”

15. Respondent's 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

16. Paragraphs 1 through 10 are realleged and incorporated herein by reference.
17. On or about February 25, 2009, an employee of EPA identified as Frank Carpenter, accessed the website [www.bugbam.com](http://www.bugbam.com) where he purchased the product "Bug Bam for Kids Insect Repelling Wristband."
18. The website [bugbam.com](http://bugbam.com) was registered to, administered by, and under the control of Respondent on or about February 25, 2009.
19. As a result, on or about February 25, 2009, Respondent distributed or sold "Bug Bam for Kids Insect Repelling Wristband."
20. Respondent's 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

21. Paragraphs 1 through 10 are realleged and incorporated herein by reference.
22. On or about February 25, 2009, an employee of EPA identified as Frank Carpenter, accessed the website [www.bugbam.com](http://www.bugbam.com) where he purchased the product "Bug Bam Insect Repelling Grid."

23. The website bugbam.com was registered to, administered by, and under the control of Respondent on or about February 25, 2009.
24. As a result, on or about February 25, 2009, Respondent distributed or sold “Bug Bam Insect Repelling Grid.”
25. Respondent’s 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 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))	\$3,825
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))	\$3,825
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))	\$3,825
<b>TOTAL (after rounding to nearest \$100)</b>	<b>\$11,500</b>

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 18 day of Sept., 2009.

A handwritten signature in black ink, appearing to read "Katherine A. Taylor". The signature is written in a cursive style and is positioned above 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 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 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.  
2104 Monterey Boulevard  
Hermosa Beach, CA 90254-2630

Dated: SEP 18 2009

By: 

Ekho Lim  
U.S. Environmental Protection Agency, Region IX