



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 21 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0191 0592

Mr. Steve Vernon
M V Pets
7429 S. Westnedge Avenue
Portage, Michigan 49002

Consent Agreement and Final Order **FIFRA-05-2010-0001**

Dear Mr. Vernon:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on October 21, 2009 with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,500 is to be paid in the manner described in paragraphs 43 thru 44. Please be certain that the number **BD 2751045P001** and the docket number are written on both the transmittal letter and on the check. Payment is due by November 20, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

RECEIVED
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REGIONAL HEARING CLERK
USEPA
REGION 5

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2010-0001
)	
Discus Enterprises, L.L.C. d/b/a MV Pets,)	Proceeding to Assess a Civil Penalty
Portage, Michigan)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
<hr/>)	

Consent Agreement and Final Order Commencing and Concluding the Proceeding

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Discus Enterprises, L.L.C. d/b/a MV Pets (Respondent), a limited liability corporation doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be simultaneously commenced and concluded by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Jurisdiction for this action is conferred upon EPA by Sections 3, 14, and 25 of FIFRA, 7 U.S.C. §§ 136a, 136l and 136w.

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

10. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

11. Pursuant to the authority granted it under Section 3 of FIFRA, 7 U.S.C. § 136a, EPA promulgated regulations set forth at 40 C.F.R. Part 152 establishing procedures, requirements, and criteria concerning the registration of pesticide products.

12. 40 C.F.R. § 152.15 requires the registration with EPA of all applicable pesticide products that will be sold or distributed in the United States.

13. 40 C.F.R. § 152.50(e) requires as part of the pesticide product registration process that the registrant submit a draft label for EPA's approval.

14. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a "pesticide" as, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "[d]istribute or sell" as "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.”

16. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any state to distribute or sell to any person any pesticide that is adulterated or misbranded.

17. Pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if any word, statement, or other information required by or under the authority of FIFRA to appear on the label or labeling, is not prominently placed thereon with such conspicuousness and in such terms to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

18. Pursuant to Section 2(q)(1)(B) of FIFRA, 7 U.S.C. § 136(q)(1)(B), a pesticide is misbranded if 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 25(c)(3) of FIFRA, 7 U.S.C. § 136w(c)(3).

19. Pursuant to Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), a “label” is the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

20. Pursuant to Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), “labeling” includes all labels, and all other written, printed, or graphic matter accompanying the pesticide or device at any time.

21. Pursuant to the authority granted to it under Section 25(c)(3) of FIFRA, 7 U.S.C. § 136w(c)(3), EPA promulgated regulations set forth at 40 C.F.R. Part 156 establishing labeling standards for pesticides.

22. 40 C.F.R. § 156.10(i)(2)(ii) requires pesticide labels to include, immediately under the heading “Directions for Use,” the statement “[i]t is a violation of Federal law to use this product in a manner inconsistent with its labeling.”

23. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, the Administrator of EPA may assess against any retailer, or other distributor, who violates any provision of FIFRA a civil penalty of up to \$6,500 for each offense that occurred from March 15, 2004 through January 12, 2009.

EPA’s Factual Allegations

24. “Frontline Plus for Dogs,” EPA Reg. No. 65331-5, is a “pesticide,” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. “Frontline for Cats,” EPA Reg. No. 65331-4, is a “pesticide,” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. On March 24, 2004, pursuant to 40 C.F.R. Part 152, Subpart F, 40 C.F.R. 152.100 *et seq.*, the Office of Pesticide Programs (OPP), EPA Headquarters accepted and approved pesticide product labels for “Frontline Plus for Dogs,” EPA Registration Number 65331-5 (*see* Attachment 1), and “Frontline Plus for Cats,” EPA Registration Number 65331-4 (*see* Attachment 2), submitted by the registrant Merial Limited.

27. The March 24, 2004 labels accepted by OPP for “Frontline Plus for Dogs,” EPA Registration Number 65331-5, and “Frontline Plus for Cats,” EPA Registration Number 65331-4, contained (among others) the following elements:

- a. An outer retail carton bearing directions for use, a statement of ingredients, and other information required by 40 C.F.R. § 156;
- b. A pamphlet insert bearing:
 - i) Directions for use in the United States;

ii) A First Aid Statement stating:

FIRST AID

Have the product container or label with you when calling a poison control center or doctor, or going for treatment.

IF SWALLOWED: Call a poison control center or doctor immediately for treatment advice. Have person sip a glass of water if able to swallow. Do not induce vomiting unless told to do so by a poison control center or doctor. Do not give anything by mouth to an unconscious person.

PRECAUTIONARY STATEMENTS

HAZARDS TO HUMANS. CAUTION.

Harmful if swallowed. Causes eye irritation. Avoid contact with skin, eyes, or clothing. Wash thoroughly with soap and water after handling.

HAZARDS TO DOMESTIC ANIMALS.

For external use only. Do not use on puppies under 8 weeks of age. Individual sensitivities, while rare, may occur after using any pesticide product. Pets may experience some temporary irritation at the site of product application. If signs persist, or become more severe within a few days of application, consult a veterinarian immediately. Certain medications can interact with pesticides. Consult a veterinarian before using on medicated, debilitated, aged, pregnant or nursing animals. Call 1-800-660-1842 for 24 hour assistance.

c. A reapplication card;

d. A child resistant blister package containing either three or six product applicators. Each product applicator bearing, among other information:

- i) The size of the product on both sides of the applicator in U.S. customary units of volume (i.e. fluid ounces);
- ii) The EPA registration number;
- iii) The product name on both sides of the applicator;
- iii) A reference statement on one side of the applicator referring users to the main labeling on the outer carton; and
- iv) The United States based company name and lot number on one side of the applicator.

28. Respondent owned or operated a place of business located at 291 West Centre Road, Portage, Michigan during all times relevant to this Complaint.

29. Respondent is a retailer that “distributes or sells” “pesticides,” as those terms are defined at 7 U.S.C. § 136(gg), and 7 U.S.C. § 136(u).

30. On July 24, 2007, Respondent distributed or sold a pesticide product represented to be “Frontline Plus for Cats.”

31. On August 10, 2007, Respondent distributed or sold a pesticide product represented to be "Frontline Plus for Dogs."

Count I

32. Complainant incorporates by reference the allegations contained in paragraphs 1 through 31 of this CAFO.

33. The pesticide product label for the "Frontline Plus for Dogs" offered for distribution or sale by Respondent on or about August 10, 2007, did not contain the statement "[i]t is a violation of Federal law to use this product in a manner inconsistent with its labeling."

34. The pesticide product label for the "Frontline Plus for Dogs" offered for distribution or sale by Respondent on or about August 10, 2007, did not contain the following required labeling elements:

- a. An outer retail carton bearing directions for use, a statement of ingredients, and other information required by 40 C.F.R. § 156;
- b. A pamphlet insert bearing:
 - i) Directions for use in the United States;
 - ii) A First Aid Statement stating:

FIRST AID

Have the product container or label with you when calling a poison control center or doctor, or going for treatment.

IF SWALLOWED: Call a poison control center or doctor immediately for treatment advice. Have person sip a glass of water if able to swallow. Do not induce vomiting unless told to do so by a poison control center or doctor. Do not give anything by mouth to an unconscious person.

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For external use only. Do not use on puppies under 8 weeks of age. Individual sensitivities, while rare, may occur after using any pesticide product. Pets may experience some temporary irritation at the site of product application. If signs persist, or become more severe within a few days of application, consult a veterinarian immediately. Certain medications can interact with pesticides. Consult a veterinarian before using on medicated, debilitated, aged, pregnant or nursing animals. Call 1-800-660-1842 for 24 hour assistance.

- c. A reapplication card;
- d. A child resistant blister package containing either three or six product applicators. Each product applicator bearing, among other information:
 - i) The size of the product on both sides of the applicator in U.S. customary units of volume (i.e. fluid ounces);
 - ii) The EPA registration number;
 - iii) The product name on both sides of the applicator;
 - iii) A reference statement on one side of the applicator referring users to the main labeling on the outer carton; and
 - iv) The United States based company name and lot number on one side of the applicator.

35. Because the pesticide product labeled “Frontline Plus for Dogs” offered for distribution or sale by Respondent on August 10, 2007 did not include the information identified in Paragraphs 33 and 34, the pesticide product was misbranded.

36. Respondent’s distribution or sale of a misbranded pesticide on August 10, 2007 violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count II

37. Complainant incorporates by reference the allegations contained in paragraphs 1 through 31 of this Complaint.

38. The pesticide product label for the “Frontline Plus for Cats” offered for distribution or sale by Respondent on or about July 24, 2007 did not contain the statement “[i]t is a violation of Federal law to use this product in a manner inconsistent with its labeling.”

39. The pesticide product label for the "Frontline Plus for Cats," EPA Reg. No. 65331-4, offered for distribution or sale by Respondent on or about July 24, 2007 did not contain the following required labeling elements:

- a. An outer retail carton bearing directions for use, a statement of ingredients, and other information required by 40 C.F.R. § 156;
- b. A pamphlet insert bearing:
 - i) Directions for use in the United States;
 - ii) A First Aid Statement stating:

FIRST AID

Have the product container or label with you when calling a poison control center or doctor, or going for treatment.

IF SWALLOWED: Call a poison control center or doctor immediately for treatment advice. Have person sip a glass of water if able to swallow. Do not induce vomiting unless told to do so by a poison control center or doctor. Do not give anything by mouth to an unconscious person.

PRECAUTIONARY STATEMENTS

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Harmful if swallowed. Causes eye irritation. Avoid contact with skin, eyes, or clothing. Wash thoroughly with soap and water after handling.

HAZARDS TO DOMESTIC ANIMALS.

For external use only. Do not use on puppies under 8 weeks of age. Individual sensitivities, while rare, may occur after using any pesticide product. Pets may experience some temporary irritation at the site of product application. If signs persist, or become more severe within a few days of application, consult a veterinarian immediately. Certain medications can interact with pesticides. Consult a veterinarian before using on medicated, debilitated, aged, pregnant or nursing animals. Call 1-800-660-1842 for 24 hour assistance.

- c. A reapplication card;
- d. A child resistant blister package containing either three or six product applicators. Each product applicator bearing, among other information:
 - i) The size of the product on both sides of the applicator in U.S. customary units of volume (i.e. fluid ounces);
 - ii) The EPA registration number;
 - iii) The product name on both sides of the applicator;
 - iii) A reference statement on one side of the applicator referring users to the main labeling on the outer carton; and
 - iv) The United States based company name and lot number on one side of the applicator.

40. Because the pesticide product labeled “Frontline Plus for Cats” offered for distribution or sale by Respondent on July 24, 2007 did not include the information identified in Paragraphs 38 and 39, the pesticide product was misbranded.

41. Respondent’s distribution or sale of a misbranded pesticide on July 24, 2007 violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

42. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$4,500. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violation. Complainant also considered EPA’s *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

43. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4,500 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier’s or certified check, payable to the “Treasurer, United States of America,” to either:

for checks sent by regular U.S. Postal Service mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

for checks sent by express mail:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
Contact: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

The check must note *In re Discus Enterprises, L.L.C. d/b/a MV Pets*, the docket number of this CAFO and the billing document number.

44. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

John Matson (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

45. This civil penalty is not deductible for federal tax purposes.

46. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

47. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

48. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

49. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

50. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

51. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

52. The terms of this CAFO bind Respondent, its successors, and assigns.


53. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

54. Each party agrees to bear its own costs and attorney's fees in this action.

55. This CAFO constitutes the entire agreement between the parties.

Discus Enterprises, L.L.C. d/b/a MV Pets, Respondent


10-1-09
Date



Steven Vernon
Owner
Discus Enterprises, L.L.C. d/b/a MV Pets

United States Environmental Protection Agency, Complainant

October 15, 2009
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Discus Enterprises, L.L.C. d/b/a MV Pets
Docket No.
FIFRA-05-2010-0001

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10/19/09
Date

Walter W. Kavalich
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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OCT 20 2009

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COUNSEL

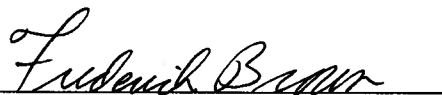
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Discus Enterprises, L.L.C. d/b/a MV Pets, was filed on October 21, 2009, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0191 0592, a copy of the original to the Respondents:

Mr. Steve Vernon
M V Pets
7429 S. Westnedge Avenue
Portage, Michigan 49002

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
John Matson, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2010-0001

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