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Administrative Hearing

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

_____)	Docket No. FIFRA-09-2010- <u>0014</u>
In the Matter of:)	
Marukai Corporation,)	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 Marukai Corporation 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), and misbranded devices in violation of Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 137j(a)(1)(F).

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 Marukai Corporation. (“Respondent”).

GENERAL ALLEGATIONS

1. 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.
2. The term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” 7 U.S.C. § 136(s).
3. The term “pesticide” means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . .” 7 U.S.C. § 136(u).
4. The term “pest” means “(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 25(c)(1).” 7 U.S.C. § 136(t).
5. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), makes it unlawful for any person to distribute or sell to any person any device which is misbranded.
6. The term “device” means “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 therefrom.” 7 U.S.C. § 136(h).

7. Section 2(q)(1)(D) of FIFRA states a pesticide is misbranded if the labeling accompanying it does not contain the registration number assigned under Section 7 of FIFRA to each establishment in which it was produced.
8. The term “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 receive and (having so received) deliver or offer to deliver.” See FIFRA § 2(gg), 7 U.S.C. § 136(gg).
9. At all times relevant to this action, Respondent is a “person” as that term is defined in Section 2(s) of the Act, 7 U.S.C. § 136(s), in that it is a corporation.
10. Respondent owns and operates a facility (the “Facility”) at 2310 Kamehameha Highway, Honolulu, Hawaii.
11. Respondent engages in sale and/or distribution of groceries and various household goods.

ALLEGED VIOLATIONS

COUNTS 1-37: Sale or Distribution of an Unregistered Pesticide, 7 U.S.C. § 136j(a)(1)(A).

12. Paragraphs 1 through 11 are realleged and incorporated herein by reference for each and every count specified below.
13. On or about September 24, 2008, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof the following products at the Facility: (1) “Bite Bye Insect Repellent Soap”; (2) “Caretex Tsumekae Refill”; (3) “FCC C-1104”; (4) “FCC C-1146”; (5) “House Cleanser Super Orange Plus”; (6) “Kao

Family Pure Dishwashing Soap”; (7) “Kao Kantan My Pet Spray”; (8) “Kao Kitchen Quickel Refill”; (9) “Kao Magicrin M Detergent”; (10) “Kao My Pet Liquid Detergent”; (11) “Kao Quickle Toilet Cleaning Sheet”; (12) “Kao Toilet Magicrin”; (13) “Kao Toilet Quikle Paper Cleaner”; (14) “Kao Tsukeoki Magicrin Detergent”; (15) “Kincho Detergent for Toilet”; (16) “Kincho Mizumawari Twinkle Kitchen Cleaner”; (17) “Kitchen Detergent”; (18) “Kitchen Detergent Habment Blue/Rose/Gold”; (19) “Kitchen Detergent Jokin My Fresh”; (20) “Kitchen Detergent Pink”; (21) “Kobayashi Toilet Cleaner”; (22) “Kosee Dishwashing Detergent”; (23) “Kosee Nursing Bottle Detergent”; (24) “Kosee Kitchen Detergent”; (25) “Lion Charmy V Dish Washing Soap”; (26) “Lion Kirei Mist for Kitchen Slime Removal”; (27) “Lion Kireikirei Antibacteria Spray”; (28) “Lion Kireikirei Garbage Spray”; (29) “Lion Microwave Kitchen Spray”; (30) “Lion Pipe Man-gel Pipe Cleaner”; (31) “Liquid Soap Flooring Cleaner”; (32) “Orange Oil C-1368”; (33) “Orange Oil C-1387”; (34) “Sentakuso Cleaner for Washing Machine”; (35) “Wet Tissue”; (36) “Yanget for Kitchen”; and (37) “Yo Twinkle Toilet Cleaner.”

14. The labeling of the following products claim that they kill or control growth of bacteria and germs: (1) “Bite Bye Insect Repellent Soap”; (2) “Caretex Tsumekae Refill”; (3) “FCC C-1104”; (4) “FCC C-1146”; (5) “House Cleanser Super Orange Plus”; (6) “Kao Family Pure Dishwashing Soap”; (7) “Kao Kantan My Pet Spray”; (8) “Kao Kitchen Quickel Refill”; (9) “Kao Magicrin M Detergent”; (10) “Kao My Pet Liquid Detergent”; (11) “Kao Quickle Toilet Cleaning Sheet”; (12) “Kao Toilet Magicrin”; (13) “Kao Toilet Quikle Paper Cleaner”; (14) “Kao Tsukeoki Magicrin Detergent”; (15) “Kincho Detergent for Toilet”; (16) “Kincho Mizumawari Twinkle Kitchen Cleaner”; (17)

“Kitchen Detergent”; (18) “Kitchen Detergent Habment Blue/Rose/Gold”; (19) “Kitchen Detergent Jokin My Fresh”; (20) “Kitchen Detergent Pink”; (21) “Kobayashi Toilet Cleaner”; (22) “Kosee Dishwashing Detergent”; (23) “Kosee Nursing Bottle Detergent”; (24) “Kosee Kitchen Detergent”; (25) “Lion Charmy V Dish Washing Soap”; (26) “Lion Kirei Mist for Kitchen Slime Removal”; (27) “Lion Kireikirei Antibacteria Spray”; (28) “Lion Kireikirei Garbage Spray”; (29) “Lion Microwave Kitchen Spray”; (30) “Lion Pipe Man-gel Pipe Cleaner”; (31) “Liquid Soap Flooring Cleaner”; (32) “Orange Oil C-1368”; (33) “Orange Oil C-1387”; (34) “Sentakuso Cleaner for Washing Machine”; (35) “Wet Tissue”; (36) “Yanget for Kitchen”; and (37) “Yo Twinkle Toilet Cleaner.”

15. Germs and bacteria are “pests” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
16. The following products are “pesticides” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in that they are substances or mixture of substances intended for preventing, destroying, repelling, or mitigating “pests”: (1) “Bite Bye Insect Repellent Soap”; (2) “Caretex Tsumekae Refill”; (3) “FCC C-1104”; (4) “FCC C-1146”; (5) “House Cleanser Super Orange Plus”; (6) “Kao Family Pure Dishwashing Soap”; (7) “Kao Kantan My Pet Spray”; (8) “Kao Kitchen Quickel Refill”; (9) “Kao Magicrin M Detergent”; (10) “Kao My Pet Liquid Detergent”; (11) “Kao Quickle Toilet Cleaning Sheet”; (12) “Kao Toilet Magicrin”; (13) “Kao Toilet Quikle Paper Cleaner”; (14) “Kao Tsukeoki Magicrin Detergent”; (15) “Kincho Detergent for Toilet”; (16) “Kincho Mizumawari Twinkle Kitchen Cleaner”; (17) “Kitchen Detergent”; (18) “Kitchen Detergent Habment Blue/Rose/Gold”; (19) “Kitchen Detergent Jokin My Fresh”; (20) “Kitchen Detergent

Pink”; (21) “Kobayashi Toilet Cleaner”; (22) “Kosee Dishwashing Detergent”; (23) “Kosee Nursing Bottle Detergent”; (24) “Kosee Kitchen Detergent”; (25) “Lion Charmy V Dish Washing Soap”; (26) “Lion Kirei Mist for Kitchen Slime Removal”; (27) “Lion Kireikirei Antibacteria Spray”; (28) “Lion Kireikirei Garbage Spray”; (29) “Lion Microwave Kitchen Spray”; (30) “Lion Pipe Man-gel Pipe Cleaner”; (31) “Liquid Soap Flooring Cleaner”; (32) “Orange Oil C-1368”; (33) “Orange Oil C-1387”; (34) “Sentakuso Cleaner for Washing Machine”; (35) “Wet Tissue”; (36) “Yanget for Kitchen”; and (37) “Yo Twinkle Toilet Cleaner.”

17. At all times relevant to this action, the following products were not registered with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a: (1) “Bite Bye Insect Repellent Soap”; (2) “Caretex Tsumekae Refill”; (3) “FCC C-1104”; (4) “FCC C-1146”; (5) “House Cleanser Super Orange Plus”; (6) “Kao Family Pure Dishwashing Soap”; (7) “Kao Kantan My Pet Spray”; (8) “Kao Kitchen Quicquel Refill”; (9) “Kao Magicrin M Detergent”; (10) “Kao My Pet Liquid Detergent”; (11) “Kao Quickle Toilet Cleaning Sheet”; (12) “Kao Toilet Magicrin”; (13) “Kao Toilet Quikle Paper Cleaner”; (14) “Kao Tsukeoki Magicrin Detergent”; (15) “Kincho Detergent for Toilet”; (16) “Kincho Mizumawari Twinkle Kitchen Cleaner”; (17) “Kitchen Detergent”; (18) “Kitchen Detergent Habment Blue/Rose/Gold”; (19) “Kitchen Detergent Jokin My Fresh”; (20) “Kitchen Detergent Pink”; (21) “Kobayashi Toilet Cleaner”; (22) “Kosee Dishwashing Detergent”; (23) “Kosee Nursing Bottle Detergent”; (24) “Kosee Kitchen Detergent”; (25) “Lion Charmy V Dish Washing Soap”; (26) “Lion Kirei Mist for Kitchen Slime Removal”; (27) “Lion Kireikirei Antibacteria Spray”; (28) “Lion Kireikirei Garbage

Spray”; (29) “Lion Microwave Kitchen Spray”; (30) “Lion Pipe Man-gel Pipe Cleaner”; (31) “Liquid Soap Flooring Cleaner”; (32) “Orange Oil C-1368”; (33) “Orange Oil C-1387”; (34) “Sentakuso Cleaner for Washing Machine”; (35) “Wet Tissue”; (36) “Yanget for Kitchen”; and (37) “Yo Twinkle Toilet Cleaner.”

18. Respondent’s sale or distribution of the products listed in Paragraph 17 at the Facility on September 24, 2008 constitutes 37 violations of Section 12(a)(1)(A) of FIFRA.

COUNTS 38-39: Sale or Distribution of a Misbranded Device, 7 U.S.C. 136j(a)(1)(F).

19. Paragraphs 1 through 11 are realleged and incorporated herein by reference for each and every count specified below.
20. On or about September 24, 2008, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof the following products at the Facility: “Gokiburi Cockroach Catcher” and “Kincho Cockroach Trap.”
21. The labeling for “Gokiburi Cockroach Catcher” and “Kincho Cockroach Trap” claim that each traps, destroys, repels, or mitigates cockroaches.
22. Cockroaches are “pests” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
23. “Gokiburi Cockroach Catcher” and “Kincho Cockroach Trap” are “devices” as defined in Section 2(h) of FIFRA, 7 U.S.C. § 136(h).
24. At all times relevant to this Complaint, the labeling for “Gokiburi Cockroach Catcher” and “Kincho Cockroach Trap” did not contain a registration number assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which they were produced.
25. At all times relevant to this Complaint, “Gokiburi Cockroach Catcher” and “Kincho

Cockroach Trap” were “misbranded” as that term is defined in Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

26. Respondent’s sale or distribution of “Gokiburi Cockroach Catcher” and “Kincho Cockroach Trap” at the Facility on September 24, 2008 constituted 2 violations of Section 12(a)(1)(F) of FIFRA.

PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), as amended by the Debt Collection Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule (61 Fed. Reg. 69359 (December 31, 1996), 62 Fed. Reg. 13513 (March 20, 1997), 69 Fed. Reg. 7121 (February 13, 2004), and 73 Fed. Reg. 75,340 (December 11, 2008)), authorizes the assessment of a civil administrative penalty of up to \$6,500 for each violation of FIFRA after March 15, 2004 but on or before January 12, 2009. For purposes of determining the amount of the civil penalty to be assessed, Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(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. Accordingly, Complainant requests that after consideration of these statutory assessment factors, the Administrator assess against Respondent a civil administrative penalty of up to \$6,500 for each violation of the Act set forth above.

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:

David H. Kim
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. 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:

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

His telephone number is (415) 972-3882.

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 12 day of September, 2010.

A handwritten signature in black ink, 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 Consent Agreement and Final Order 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 Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

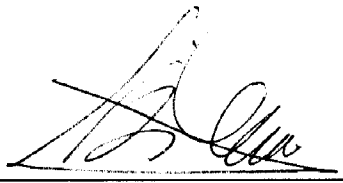
Mr. Hidejiro Matsu
President
Marukai Corporation
2310 Kamehameha Highway
Honolulu, HI 96819

Ms. Julia Tachikawa, Esq.
1978 Westridge Road
Los Angeles, CA 90049

Dated: _____

9/24/10

By: _____



Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX