

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2012 DEC 13 P 3:33
REGIONAL HEARING
CLERK

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In the Matter of :
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Daifuku Trading Corp., :
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Respondent. :
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Proceeding Under the Federal :
Insecticide, Fungicide, and :
Rodenticide Act, as amended. :
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COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

Docket No. FIFRA-02-2013-5102

1. This Complaint and Notice of Opportunity for Hearing (Complaint) is filed pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or the "Act"), as amended, 7 U.S.C. § 1361(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Suspension of Permits ("Consolidated Rules of Practice" or "CROP"), 40 C.F.R. Part 22.
2. The Complainant, Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), has been duly delegated the authority to institute this action.
3. Respondent is Daifuku Trading Corp. (hereinafter alternatively referred to as "Respondent" or "Daifuku").
4. Respondent is incorporated in the State of New York and operates in the States of New York and New Jersey.
5. Respondent has been, and continues to be, a "person" as defined by FIFRA Section 2(s), 7

U.S.C. Section 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

6. Respondent is a “distributor or seller” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

7. Respondent is a “wholesaler”, “dealer”, “retailer,” or “other distributor” within the meaning of Section 14(a) (1) of FIFRA, 7 U.S.C. §136l(a) (1).

8. At times relevant to this proceeding, Respondent owned and/or operated a facility located at 31-85 Whitestone Expressway, Flushing, New York (“Flushing Facility”).

9. Respondent currently owns and/or operates a facility located at 360 South Van Brunt Street, Englewood, New Jersey (“Englewood Facility”).

10. Respondent’s facilities in Flushing, New York, and in Englewood, New Jersey, each constitute an “establishment,” as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

11. From its facilities, Respondent sells or distributes groceries and a variety of household goods, including pest control products.

12. Section 2(mm) of FIFRA, 7 U.S.C. Section 136(mm) defines the term “antimicrobial pesticide” as, among other things, “a pesticide that (A) is intended to- (i) disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.”

13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “(1) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.”

14. Respondent has distributed or sold the products: “home ‘Z Rice Worm repellent”, “Trista Melamine Sponge,” “Killpop Mat,” “Laundry Soap,” “Baby Basic B & B Feeding Bottle Cleanser,” and “Smart Blue Fresh.”

15. The “home ‘Z Rice Worm repellent,” “Trista Melamine Sponge” and “Killpop Mat” products are pesticides within the meaning of Section 2(u) of FIFRA, 7 U.S.C. Section 136(u).

16. The “Laundry Soap,” “Baby Basic B & B Feeding Bottle Cleanser,” and “Smart Blue Fresh” products are antimicrobial pesticides within the meaning of Section 2(mm) of FIFRA, 7 U.S.C. Section 136(mm).

17. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, pesticides intended for distribution or sale must be registered with EPA.

18. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. Section 136(q)(1)(E) states that a pesticide is misbranded if any word, statement or other information required to appear on the label is not

likely to be read or understood by the ordinary individual under customary conditions of purchase and use.

19. 40 C.F.R. Section 156.10(a) (1) (Contents of the label) states that all pesticide products shall bear a label containing the following information: the name of the product, name and address of producer or registrant or person for whom the product was produced, net weight or measure of contents, product registration number, producer establishment number, ingredient statement, hazard and precautionary statement, directions for use, and use classifications.

20. 40 C.F.R. Section 156.10(a) (3) (Language to be used) states that all pesticide products shall bear all required labeling text in the English language.

21. Under authority of Sections 8 and 9 of FIFRA, 7 U.S.C. Sections 136f and 136g, duly authorized EPA inspectors conducted an inspection at the Flushing Facility on February 6, 2012.

22. Under authority of Sections 8 and 9 of FIFRA, 7 U.S.C. Sections 136f and 136g, duly authorized EPA inspectors conducted an inspection at the Englewood Facility on February 29, 2012 and March 27, 2012.

23. During the February 29, 2012 and March 27, 2012 inspections, EPA's inspectors observed the following pesticide products: Trista Melamine Sponge," "Killpop Mat," "Laundry Soap," "Baby Basic B & B Feeding Bottle Cleanser," and "Smart Blue Fresh" products.

24. During the February 29, 2012 and March 27, 2012 inspections, EPA's inspectors collected samples of the Trista Melamine Sponge," "Killpop Mat," "Laundry Soap," "Baby Basic B & B Feeding Bottle Cleanser," and "Smart Blue Fresh" products.

25. EPA arranged for translation from Korean to English of the labels of the "home 'Z Rice Worm Repellent," "Trista Melamine Sponge," "Killpop Mat," "Laundry Soap," "Baby Basic B & B Feeding Bottle Cleanser," and "Smart Blue Fresh" products.

26. On July 24, 2012, EPA issued a Stop Sale, Use or Removal Order ("SSURO") prohibiting the Respondent from selling the following pesticide products: "home 'Z Rice Worm repellent", "Trista Melamine Sponge," "Killpop Mat," "Laundry Soap," "Baby Basic B & B Feeding Bottle Cleanser," and "Smart Blue Fresh."

Count 1 - Sale/Distribution of an Unregistered Pesticide
"home 'Z Rice Worm repellent"

27. Complainant realleges each allegation contained in Paragraphs 1 through 26, inclusive, as if fully set forth herein.

28. On June 13, 2011, the Virginia Department of Agriculture and Consumer Services Office of Pesticide Services conducted an inspection at the Super H Mart in Fairfax, Virginia ("the June 2011 inspection").

29. During the June 2011 inspection, several containers of the product named "home 'Z Rice Worm repellent" were found in the houseware section of the store.
30. During the June 2011 inspection, an invoice #8028 dated March 9, 2011 from Home & Home Distribution (31-85 Whitestone Expressway, Flushing, N.Y. 11354) and describing Super H Mart's receipt of "home Z Rice Worm repellent" was collected and forwarded to EPA.
31. Daifuku has done, and continues to do, business as Home & Home Distribution.
32. Upon information and belief, Daifuku transferred its operations from Flushing, NY to Englewood, N.J., during June 2009.
33. After Daifuku transferred operations from Flushing, N.Y. to Englewood, N.J., during June 2009, the company continued to use invoices which listed the "Home & Home Distribution" company at the old address (Flushing, N.Y.) instead of Daifuku at the new address (Englewood, N.J.).
34. Sometime between the dates of August 16, 2011 and September 22, 2011, Daifuku changed the letterhead on its invoices to indicate a name and address change from "Home & Home Distribution," Flushing, N.Y. to "Daifuku", Englewood, N.J.
35. Under authority of Sections 8 and 9 of FIFRA, 7 U.S.C. Sections 136f and 136g, EPA conducted an inspection at Home & Home Distribution's retail store at 31-85 Whitestone Expressway, Flushing, NY 11354 on February 6, 2012.
36. During EPA's inspection of Home & Home Distribution on February 6, 2012, a representative of Home & Home Distribution indicated to EPA's inspectors that "Dehumidification" and "New Aekyung" appearing on an invoice was actually indicative of the sales of the product, "home 'Z Rice Worm repellent" and the representative highlighted the line item on the invoice.
37. Under the authority of Sections 8 and 9 of FIFRA, 7 U.S.C. Sections 136f and 136g, EPA conducted inspections at Daifuku's warehouse located at 360 South Van Brunt Street, Englewood, New Jersey 07631 on February 29, 2012 and on or about March 27, 2012.
38. During EPA's February 29, 2012 inspection at Daifuku's warehouse, Daifuku's representatives provided business cards to EPA's inspectors which indicated that Daifuku does business as "Home & Home Distribution."
39. During EPA's February 29, 2012 and March 27, 2012 inspections at Daifuku's warehouse, Daifuku's representative(s) informed EPA that Daifuku does business as "Home & Home Distribution."

40. During EPA's February 29, 2012 inspection at Daifuku's facility in Englewood, NJ, Daifuku's representative signed an Affidavit stating that "home 'Z Rice Worm repellent" product was a "one time import and distribution."

41. The label of the "home 'Z Rice Worm repellent" product has three pictures of rice infested with rice worms showing how the product is used to repel rice beetles.

42. The label of the "home 'Z Rice Worm repellent product" claims that it kills and/or repels "rice bugs" and also "prevents molding for up to 4 months."

43. A "rice worm (rice beetle)" is a "pest," as defined by Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and regulations at 40 CFR § 152.5(a).

44. By virtue of the product name, design and function of the "home 'Z Rice Worm repellent" product sold or distributed by Daifuku, this product is intended for preventing, destroying, repelling, or mitigating a pest, and therefore is a pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. Section 136(u), and must be registered with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. Section 136a.

45. The "home 'Z Rice Worm repellent" has never been registered with EPA as a pesticide.

46. Respondent's sale or distribution of the unregistered pesticide product, "home 'Z Rice Worm repellent" constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).

Count 2- Sale/Distribution of Misbranded Pesticide
"home 'Z Rice Worm repellent"

47. Complainant realleges each allegation contained in Paragraphs 1 through 46, inclusive, as if fully set forth herein.

48. The label of the "home 'Z Rice Worm repellent" product has three pictures of rice infested with rice worms showing how the product is used to repel rice beetles.

49. The only words in English on the label of the "home 'Z Rice Worm repellent" product are the product name "home 'Z Rice Worm repellent," "home 'Z Fresh Home Zone," and "www.aekyungst.co.kr."

50. The label for the "home 'Z Rice Worm repellent" product does not contain the following information in English: the name and address of the producer or registrant or person for whom the product was produced, the product registration number, the producer establishment number, ingredient statement, hazard and precautionary statement, directions for use and use classification.

51. The label language for the “home ‘Z Rice Worm repellent” product is misbranded within the meaning of Section 2(q)(1)(E), 7 U.S.C. Section 136(q)(1)(E) and 40 C.F.R. Sections 156.10(a)(1)&(3), because it is not likely to be read or understood by the ordinary individual under customary conditions of purchase and use.

52. Respondent sold or distributed the “home ‘Z Rice Worm repellent” product on at least one occasion, as identified in paragraph 30 above.

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

54. Respondent’s sale or distribution of the misbranded pesticide product, “home ‘Z Rice Worm repellent,” constitutes an unlawful act pursuant to and under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) 40 C.F.R.

Count 3 Sale/Distribution of Unregistered Pesticide
Trista Melamine Sponge

55. Complainant realleges each allegation contained in Paragraphs 1 through 54, inclusive, as if fully set forth herein.

56. Under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, EPA conducted an inspection at Home & Home Distribution’s retail store at 31-85 Whitestone Expressway, Flushing, N.Y. 11354 on February 6, 2012 (“the February 6, 2012 inspection”).

57. During the February 6, 2012 inspection, EPA collected an invoice (#10543), dated December 5, 2011, whose letterhead identifies “Daifuku Trading Corp D/B/A Home & Home Distribution” of “360 South Van Brunt St., Englewood, New Jersey 07631” as a seller and/or distributor of “Trista Melamine Sponge” product to “Home & Home Merchandise Corp. of 31-85 Whitestone Expressway, Flushing, New York 11354.”

58. Under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, EPA conducted an inspection at Daifuku’s warehouse /facility at 360 South Van Brunt Street, Englewood, New Jersey 07631 on February 29, 2012 and on or about March 27, 2012.

59. During EPA’s February 29, 2012 inspection at Daifuku’s warehouse in Englewood, NJ, EPA inspectors observed boxes of the “Trista Melamine Sponge” pesticide product and collected a physical sample of the product (Sample # “SubA-02601213731010201”).

60. The boxes of “Trista Melamine Sponges” that EPA’s inspectors observed at the

61. February 29, 2012 inspection of Daifuku's warehouse had been returned to Daifuku from the Home & Home Distribution store in Flushing, NY.
62. Daifuku (doing business as Home & Home Distribution) sold and/or distributed "Trista Melamine Sponges" to Home & Home Merchandise Corp (Flushing, NY) and Home & Home Corp. (Flushing NY) during 2011 and 2012.
63. The (translated) label for the Trista Melamine Sponges had antibacterial claims, including the statements: "Anti bacteria", "99.9% naturally antibiotic product".
64. A "bacteria" is a "pest," as defined by Section 2(t) of FIFRA, 7 U.S.C. §136(t) and regulations at 40 CFR §152.5(a).
65. By virtue of the language on the label of the "Trista Melamine Sponge", this product offered for sale or distribution by Daifuku is intended to remove bacteria and microorganisms, and therefore is an antimicrobial pesticide as defined by Section 2 (mm) (1) of FIFRA, 7 U.S.C. Section 136(mm)(1).
66. The Trista Melamine Sponge has never been registered with EPA as a pesticide.
67. Respondent's sale or distribution of the unregistered pesticide product, "Trista Melamine Sponge repellent" constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).

Count 4 Sale/Distribution of Misbranded Pesticide
Trista Melamine Sponge

68. Complainant realleges each allegation contained in Paragraphs 1 through 66, inclusive, as if fully set forth herein.
69. The only words in English on label of the "Trista Melamine Sponge" product appear on the front and side panels as follows: front panel: "Anti Bacteria," "99.9% Antibiosis," "No Detergent," "No water pollution," and "Star Susemi;" side panel: "Characteristics: Antibiosis, Sanitary, Cleans Dirt with Detergent;" "Uses: Refrigerator, sinks, computer, electronic appliances, Microwave, bath;" "Material: Melamine Foam 100%; and name and address of Agent and Manufacturer."
70. The label for the "Trista Melamine Sponge" product does not contain the following information in English: product registration number, producer establishment number, ingredient statement, hazard and precautionary statement, and directions for use.
71. The label language for the "Trista Melamine Sponge" product is misbranded under Section 2(q)(1)(E), 7 U.S.C. Section 136(a)(1)(E) and 40 C.F.R. Sections 156.10(a)(1) & (3), because it is not likely to be read or understood by the ordinary individual under customary conditions of purchase and use.

72. Respondent sold or distributed the “Trista Melamine Sponge” on at least one occasion, as identified in paragraph 57 above.

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

74. Respondent’s sale or distribution of the misbranded pesticide product, “Trista Melamine Sponge,” constitutes an unlawful act pursuant to and under Section 12(a) (1) (E) of FIFRA, 7 U.S.C. § 136j (a) (1) (E).

Count 5 - Sale/Distribution Unregistered Pesticide
Killpop Mat

75. Complainant realleges each allegation contained in Paragraphs 1 through 73, inclusive, as if fully set forth herein.

76. Under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, EPA conducted an inspection at the Englewood Facility on March 27, 2012 (“the March 27, 2012 inspection”).

77. During the March 27, 2012 inspection a total of 2,393 units of “Killpop Mat” were found in stock and being held for sale or distribution within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).

78. During the March 27, 2012 inspection duly authorized EPA inspectors collected a physical sample of the “Killpop Mat” pesticide product and assigned it a Sample Number of “Sub B-032712133731010201.”

79. The Killpop Mat product is an incense base and incense mat intended to kill mosquitos.

80. The (translated) label of the Killpop Mat product displays several pesticidal claims including but not limited to “insecticide for the world”, “safe and fast insect killing effect”, “Lasts until Dawn—fast insect killing effect” and “made of Bioallethrin, which has an excellent insect killing effect”.

81. Bioallethrin is an active ingredient in the “Killpop Mat” pesticide product.

82. By virtue of the language on the label of the Killpop Mat, this product offered for sale or distribution by DAIFUKU is intended to kill insects, and therefore is a “pesticide” as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

83. By virtue of the chemical active ingredient, “Bioallethrin,” contained in the Killpop Mat product, this product has no significant commercially valuable use as distributed or sold other

than use for pesticidal purpose and therefore is a pesticide requiring registration under 40 C.F.R. Section 152.15(b).

84. The Killpop Mat has never been registered with EPA as a pesticide.

85. Respondent's sale or distribution of the unregistered pesticide product, "Killpop Mat," constitutes an unlawful act pursuant to Section 12(a) (1) (A) of FIFRA, 7 U.S.C. Section 136j (a) (1) (A).

Count 6 Sale/Distribution of Misbranded Pesticide
Killpop Mat

86. Complainant realleges each allegation contained in Paragraphs 1 through 84, inclusive, as if fully set forth herein.

87. The only words in English on the label of the "Killpop Mat" are "New," "Killpop Mat", "30" and "Made in Korea."

88. The label for the "Killpop Mat" does not contain the following information in English: the name and address of the producer or registrant or person for whom the product was produced, the product registration number, the producer establishment number, ingredient statement, hazard and precautionary statement, directions for use and use classification.

89. The label language for the "Killpop Mat" product is misbranded under Section 2(q)(1)(E), 7 U.S.C. Section 136(q)(1)(E) and 40 C.F.R. Sections 156.10(a)(1)&(3), because it is not likely to be read or understood by the ordinary individual under customary conditions of purchase and use.

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

91. Respondent's sale or distribution of the misbranded pesticide product, "Killpop Mat" constitutes an unlawful act pursuant to and under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count 7 - Sale/Distribution Unregistered Pesticide
Laundry Soap

92. Complainant realleges each allegation contained in Paragraphs 1 through 90, inclusive, as if fully set forth herein.

93. During the March 27, 2012 EPA inspection at the Englewood Facility, a total of 3,328 units of "Laundry Soap" were found in stock being held for sale or distribution, within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).

94. During the March 27, 2012 inspection at the Englewood Facility duly authorized EPA inspectors collected a physical sample of the "Laundry Soap" pesticide product and assigned it a Sample Number of "Sub C-03271213731010201."

95. The (translated) label of the Laundry Soap product displays several pesticidal claims including but not limited to "99% Sterilization", "as this soap contains the sterilizing ingredient Vantocil, it eliminates more than 99% of the viruses in clothes, such as colon bacillus and staphylococcus," "Viruses killed by this 99% sterilization soap!" – colon bacillus - staphylococcus," and "Strong sterilization effects remove the viruses deep in the clothes."

96. By virtue of the language on the label of the Laundry Soap, this product offered for sale or distribution by Daifuku is intended to remove viruses, and therefore is an "antimicrobial pesticide" as defined by Section 2(mm)(1) of FIFRA, 7 U.S.C. § 136(mm)(1).

97. The Laundry Soap has never been registered with EPA as a pesticide.

98. Respondent's sale or distribution of the unregistered pesticide product, "Laundry Soap," constitutes an unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 8 Sale/Distribution of Misbranded Pesticide
Laundry Soap

99. Complainant realleges each allegation contained in Paragraphs 1 through 97, inclusive, as if fully set forth herein.

100. The only words in English on the label of the "Laundry Soap" product are the product name "Laundry Soap," "99%", and www.mkh.co.kr.

101. The label for the "Laundry Soap" does not contain the following information in English: the name and address of the producer or registrant or person for whom the product was produced, the product registration number, the producer establishment number, ingredient statement, hazard and precautionary statement, directions for use and use classification.

102. The label language for the "Laundry Soap" product is misbranded within the meaning of Section 2(q)(1)(E), 7 U.S.C. Section 136(q)(1)(E), and 40 C.F.R. Sections 156.10(a)(1)&(3), because it is not likely to be read or understood by the ordinary individual under customary conditions of purchase and use.

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

104. Respondent's sale or distribution of the misbranded pesticide product, "Laundry Soap," constitutes an unlawful act pursuant to and under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count 9 - Sale/Distribution Unregistered Pesticide
Basic Baby B & B Feeding Bottle Cleanser

105. Complainant realleges each allegation contained in Paragraphs 1 through 103, inclusive, as if fully set forth herein.

106. During the March 27, 2012 EPA inspection at the Englewood Facility, a total of 168 units of "Basic Baby B & B Feeding Bottle Cleanser" Liquid Type product were found in stock being held for sale or distribution, within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).

107. During the March 27, 2012 inspection at the Englewood Facility duly authorized EPA inspectors collected a physical sample of the "Baby Basic B & B Feeding Bottle Cleanser" pesticide product and assigned it a Sample Number of "Sub D-03271213731010201."

108. The (translated) label of the "Baby Basic B & B Feeding Bottle Cleanser" product displays several pesticidal claims including but not limited to "kills 99.9% of germs", "... it not only cleans the bottles but also kills germs perfectly without ... the need to boil the...", "...harmless to infants...", "... perfect germ killing effect (99.9% Anti-bacterial effect)...".

109. By virtue of the language on the label of the "Baby Basic B & B Feeding Bottle Cleanser", this product offered for sale or distribution by DAIFUKU is intended to remove microorganisms, and therefore is an "antimicrobial pesticide" as defined by Section 2(mm)(1) of FIFRA, 7 U.S.C. § 136(mm)(1).

110. The "Baby Basic B & B Feeding Bottle Cleanser" products have not been registered with EPA as a pesticide.

111. Respondent's sale or distribution of the unregistered pesticide product, "Baby Basic B & B Feeding Bottle Cleanser," constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 10 Sale/Distribution of Misbranded Pesticide
Baby Basic B & B Feeding Bottle Cleanser

112. Complainant realleges each allegation contained in Paragraphs 1 through 110, inclusive, as if fully set forth herein.

113. The only words in English on the label of the "Baby Basic B & B Feeding Bottle Cleanser"

product are the product name "Baby Basic B & B," "Feeding Bottle Cleanser Liquid Type," "600 ml," "99.9%," "100%," "Boryung," and "Korea Apparel Testing and Research Institute."

114. The label for the "Baby Basic B & B" product did not contain the following information in English: the name and address of the producer or registrant or person for whom the product was produced, the product registration number, the producer establishment number, ingredient statement, hazard and precautionary statement, directions for use and use classification.

115. The label language for the "Baby Basic B & B" product is misbranded within the meaning of Section 2(q)(1)(E), 7 U.S.C. Section 136(q)(1)(E) and 40 C.F.R. Sections 156.10(a)(1)&(3), because it is not likely to be read or understood by the ordinary individual under customary conditions of purchase and use.

116. The (translated) label of "Baby Basic B & B Feeding Bottle Cleanser" product displays several claims, including "Safe because it is made of 100% vegetable oil," "safety," and "Reliable and safe cleanser," and ". . . it is a cleanser that is harmless to infants and its cleaning power and harmlessness have been verified by the Korea Apparel Testing and Research Institute."

117. The claims referred to in paragraph 115, above, are "false and misleading" pursuant to Section 2(q) (1) (A) of FIFRA, 7 U.S.C. Section 136(q) (1) (A) and 40 C.F.R. Section 15.10(a) (5) (ix) and (x).

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

119. Respondent's sale or distribution of the misbranded pesticide product, "Baby Basic B & B Feeding Bottle Cleanser," constitutes an unlawful act pursuant to and under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count 11 - Sale/Distribution Unregistered Pesticide
Smart Blue Fresh

120. Complainant realleges each allegation contained in Paragraphs 1 through 118, inclusive, as if fully set forth herein.

121. During EPA's March 27, 2012 inspection at the Englewood Facility, a total of 72 units of "Smart Blue Fresh" (also known as "Odor eating Hippopotamus" spray) (hereinafter "Smart Spray") were found in stock being held for sale or distribution, within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).

122. During the March 27, 2012 EPA inspection at the Englewood Facility, duly authorized EPA inspectors collected a physical sample of the "Smart Spray" and assigned it a Sample Number of "Sub E-03271213731010201."

123. The (translated) label of the Smart Spray product displays several pesticidal claims, including but not limited to "99% antibacterial", "Micro particulates infiltrate into textile deeply and remove odor hidden in every corner," "Anti-bacterial Action," "Results show that the product effectively kills 99.9% of fifteen kinds of germs in textile and various other places."

124. By virtue of the language on the label of the Smart Spray, this product offered for sale or distribution by DAIFUKU is intended to remove bacteria and microorganisms, and therefore is an "antimicrobial pesticide" as defined by Section 2(mm)(1) of FIFRA, 7 U.S.C. § 136(mm)(1).

125. The Smart Spray Cleaner products have not been registered with EPA as pesticides.

126. Respondent's sale or distribution of the unregistered pesticide product, "Smart Spray Cleaner" constitutes an unlawful act pursuant to Section 12(a) (1) (A) of FIFRA, 7 U.S.C. § 136j (a) (1) (A).

Count 12 Sale/Distribution of Misbranded Pesticide
Smart Blue Fresh (aka Smart Spray)

127. Complainant realleges each allegation contained in Paragraphs 1 through 125, inclusive, as if fully set forth herein.

128. The only words in English on the label of the "Smart Spray" product are "Smart," "Reckitt Benckiser," "99.9%," "370 ml +80 ml".

129. The label for the "Smart Spray" product does not contain the following information in English: the name and address of the producer or registrant or person for whom the product was produced, the product registration number, the producer establishment number, ingredient statement, hazard and precautionary statement, directions for use and use classification.

130. The label language for the "Smart Spray" product is misbranded within the meaning of Section 2(q)(1)(E), 7 U.S.C. Section 136(q)(1)(E) and 40 C.F.R. Sections 156.10(a)(1)&(3), because it is not likely to be read or understood by the ordinary individual under customary conditions of purchase and use.

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

132. Respondent's sale or distribution of the misbranded pesticide product, "Smart Spray" product constitutes an unlawful act pursuant to and under Section 12(a) (1) (E) of FIFRA, 7 U.S.C. § 136j (a) (1) (E).

Counts 13-18 Import of Pesticides without Notices of Arrival

133. Complainant realleges each allegation contained in Paragraphs 1 through 131, inclusive, as if fully set forth herein.

134. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. Section 136j(a)(2)(N), it is unlawful for a registrant, dealer, or other distributor to fail to file reports required by subchapter II of FIFRA, 7 U.S.C. Sections 136-136y.

135. FIFRA Section 17 (c), 7 U.S.C. Section 136o(c) requires the Secretary of the Treasury to notify the EPA Administrator of the arrival of pesticides in the United States.

136. Pursuant to FIFRA Section 17(e), the Secretary of the Treasury, through the United States Customs Service, prescribed regulations for the enforcement of Section 17(c) of FIFRA at 19 C.F.R. Section 12.110 through 12.117.

137. 19 C.F.R. Section 12.112 is a regulation promulgated pursuant to and under the authority of Section 17 of FIFRA, 7 U.S.C. Section 136o.

138. 19 C.F.R. Section 12.112 requires an importer desiring to import pesticides into the United States to submit EPA Form 3540-1, Notice of Arrival of Pesticides and Devices, to the U.S. Environmental Protection Agency prior to the arrival of shipment in the United States (hereinafter "Notice of Arrival").

139. The Notice of Arrival is a report required by FIFRA that must be filed with the Administrator prior to the arrival of any shipment of a pesticide in the United States.

140. Through the Notice of Arrival, the importer reports vital information to EPA such as the major active ingredients, quantity, and country of origin, carrier, port of entry, and points of contact. This information allows EPA to make informed decisions, before pesticides arrive in the United States, as to whether such importation will pose unreasonable adverse risks to public health and the environment. The Notice of Arrival also provides contact information in the event of an emergency related to the movement of potentially toxic pesticide materials.

141. During the March 27, 2012 inspection at the Englewood Facility, EPA staff collected documentary samples of the following pesticide products: "Laundry Soap," "Baby Basic B & B Bottle Feeder Cleanser," "home 'Z Rice Worm repellent," and "Killpop Mat."

142. Respondent imported the "Laundry Soap," "Baby Basic B & B Bottle Feeder Cleanser," "home 'Z Rice Worm repellent," and "Killpop Mat" pesticide products on the following dates:

Invoice Number	Date	Item
GSI-211051	3/21/2011	LAUNDRY SOAP
GSI-211208	12/5/2011	Baby Basic Bottle Cleanser
GSI-211112	5/13/2011	home 'Z Rice Worm repellent
GSI-211194	11/14/2011	home 'Z Rice Worm repellent
GSI-211085	5/1/2011	Killpop Mat
GSI-211112	6/13/2011	Killpop Mat

143. As the consignee of the shipment described in paragraph 141 above, Respondent was the "importer desiring to import pesticides" within the meaning of 19 C.F.R. Section 12.112(a).

144. Respondent imported the "Laundry Soap," "Baby Basic Bottle Cleanser," "home 'Z Rice Worm repellent," and "Killpop Mat" shipments into the United States without filing a Notice of Arrival with EPA.

145. Respondent's importation of the pesticide products identified in paragraph 141, above, without filing a Notice of Arrival prior to its arrival into the United States is a violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. Section 136j(a)(2)(N), and 19 C.F.R. Section 12.112.

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), as amended, which authorizes the assessment of a civil penalty of up to \$5,000 for each violation of "any provision of" subchapter II of FIFRA, 7 U.S.C. §§ 136 - 136y. The statutory maximum assessment per violation was raised to \$6,500 for the period March 15, 2004 through January 12, 2009. Effective after January 12, 2009, the statutory maximum is raised to \$7,500.

For purposes of determining the amount of any penalty to be assessed, Section 14 of FIFRA requires that EPA "shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation." Section 14(a) (4) of FIFRA, 7 U.S.C. § 136l (a) (4).

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time of its filing,

with specific reference to EPA's "FIFRA Enforcement Response Policy [for] The Federal Insecticide, Fungicide and Rodenticide Act," dated December 2009 (hereinafter referred to as the "ERP"). This guidance policy provides rational, consistent and equitable calculation methodologies for applying the statutory penalty criteria enumerated above to particular cases. A copy of the ERP is available upon request or may be obtained from the Internet at this address: <http://cfpub.epa.gov/compliance/resources/policies/civil/fifra/>.

Complainant proposes, subject to receipt and evaluation of further relevant information that Respondent be assessed the following civil penalties for the violations alleged in this Complaint:

Sale/distribution of unregistered "home 'Z Rice Worm repellent"	
1 Count @ \$7,500.00 per violation	\$7,500
Sale/distribution of misbranded "home 'Z Rice Worm repellent"	
1 Count @ \$5,670 per violation	\$5,670
Sale/distribution of unregistered "Trista Melamine Sponge"	
1 Count @ \$7,500.00 per violation	\$7,500
Sale/distribution of misbranded "Trista Melamine Sponge"	
1 Count @ \$5,670 per violation	\$5,670
Sale/distribution of unregistered "Killpop Mat"	
1 Count @ \$7,500.00 per violation	\$7,500
Sale/distribution of misbranded "Killpop Mat"	
1 Count @ \$5,670 per violation	\$5,670
Sale/distribution of unregistered "Laundry Soap"	
1 Count @ \$7,500.00 per violation	\$7,500
Sale/distribution of misbranded "Laundry Soap"	
1 Count @ \$5,670 per violation	\$5,670
Sale/distribution of unregistered "Basic Baby B & B Feeding Bottle Cleanser"	
1 Count @ \$7,500.00 per violation	\$7,500
Sale/distribution of misbranded "Basic Baby B & B Feeding Bottle Cleanser"	
1 Count @ \$5,670 per violation	\$5,670
Sale/distribution of unregistered "Smart Blue Fresh"	
1 Count @ \$7,500.00 per violation	\$7,500
Sale/distribution of misbranded "Smart Blue Fresh"	
1 Count @ \$5,670 per violation	\$5,670
Import of pesticide products without NOA	
6 Counts @ \$7,150 per violation	\$42,900
Total (rounded to the nearest \$100)	\$121,900.00

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES,

ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS”, and are codified at 40 C.F.R. Part 22 (2010). A copy of these rules accompanies this “Complaint and Notice of Opportunity for Hearing” (hereinafter referred to as the “Complaint”).

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint. (40 C.F.R. 22.15(a)) An Answer must be filed within 30 days after service of a Complaint. The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, N.Y. 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. (40 C.F.R. § 22.15(a)).

Respondent’s Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge (40 C.F.R. § 22.15(b)). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. (40 C.F.R. § 22.15(b)) The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), and (3) whether Respondent requests a hearing (40 C.F.R. § 22.15(b)).

Respondent’s failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held (40 C.F.R. § 22.15(c)). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. (40 C.F.R. § 22.15(c))

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.35(b). A hearing of this matter will be conducted in accordance with the applicable

provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation (40 C.F.R. § 22.15(d)). If Respondent fails to file a timely (*i.e.*, in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion (40 C.F.R. § 22.17). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint (40 C.F.R. § 22.17(a)). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c) (40 C.F.R. § 22.17(d)). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in Federal court.

D. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review (40 C.F.R. § 22.27(d)).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so within 30 days after the initial decision is served (40 C.F.R. § 22.30(a)). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, five days shall be added to the time allowed by these [rules] for the filing of a responsive document. Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations (40 C.F.R. § 22.18(b)). At an informal conference with representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Bruce Aber, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, N.Y. 10007-1866
212-637-3224 (phone)
Aber.bruce@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing (40 C.F.R. § 22.18(b) (1)). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. §22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement (40 C.F.R. § 22.18(b) (2)). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement (40 C.F.R. § 22.18(b) (2)). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed (40 C.F.R. § 22.18(b) (3)).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the Consent Agreement terminates this administrative litigation and civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment (40 C.F.R. § 22.18(a)). A copy should also be provided to the EPA Assistant Regional Counsel identified on the previous page. Such payment shall be made by cashier's or certified check or by electronic fund transfer (EFT). If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

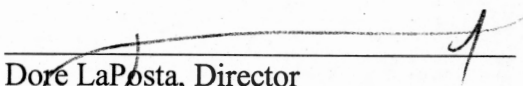
The check shall be identified with a notation listing the name of the matter (In the Matter of Daifuku Trading, Corp.) and the Docket Number (FIFRA-02-2013-5102).

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- 4) Federal Reserve Bank of New York ABA routing number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- 6) Daifuku Trading, Corp.
- 7) Case Number: FIFRA-02-2013-5102

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order. Issuance of this Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

COMPLAINANT:



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2

Dated: DECEMBER 7, 2012
New York, New York

TO: Mr. Joong Gab Kwon, President
Daifuku Trading, Corp.
360 South Van Brunt Street
Englewood, New Jersey 07631

In the Matter of Daifuku Trading Corp., Docket No. FIFRA-02-2013-5102

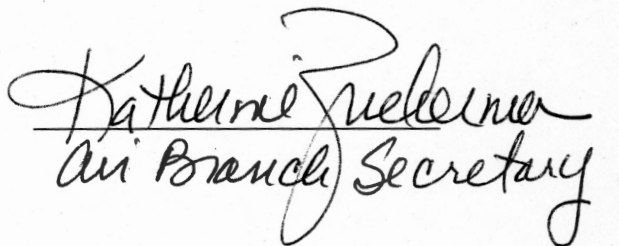
CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing docket number **FIFRA-02-2013- 5102**, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Mr. Joong Gab Kwon, President
Daifuku Trading, Corp.
360 South Van Brunt Street
Englewood, New Jersey 07631

I hand-carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: Dec. 13, 2012
New York, New York


Katherine Zuelchner
Air Branch Secretary