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HEARING DIVISION

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
) CIVIL COMPLAINT
) and
 United Global Trading, Inc.) NOTICE OF OPPORTUNITY
) FOR HEARING
)
) Docket No. FIFRA-04-2011-3020
)
 Respondent.)
)

I. CIVIL COMPLAINT

A. Jurisdiction

1. This is a Civil Administrative Complaint issued under the authority of Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 1361(a).
2. The Complainant, the Director of the Air, Pesticides and Toxics Management Division, Environmental Protection Agency ("EPA") Region 4, is authorized by the EPA Administrator and the EPA Regional Administrator for Region 4 to issue a Complaint on behalf of the Agency to persons alleged to be in violation of FIFRA. The Administrator of EPA delegated this authority to the Region 4 Administrator by EPA Delegation 5-14, dated May 11, 1994. The Region 4 Administrator delegated this authority to the Director of the Air, Pesticides and Toxics Management Division by EPA Region 4 Delegation 5-14, dated September 7, 2005.

3. The Respondent is United Global Trading, Inc., located at 8841 NW 102 Street, Medley, Florida 33178.
4. This Complaint serves as notice that the EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

B. Statement of Facts

5. Respondent is a Florida corporation doing business at all relevant times in Florida.
6. Respondent is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
7. On March 14, 2007, an officer or employee of the State of Florida, duly designated by the Administrator, conducted an inspection of the Caribbean Supercenter, located at 511 West Colonial Drive, Orlando, Florida 32807, in accordance with all applicable provisions of FIFRA Sections 8(b) and 9(a), 7 U.S.C. § 136f(b) and 136g(a).
8. During the inspection described in paragraph 7, the inspector observed that the Caribbean Supercenter was offering containers of Royalty Black Disinfectant for sale.
9. During the inspection described in paragraph 7, the inspector documented that the label on the Royalty Black Disinfectant offered for sale by the Caribbean Supercenter omitted the following required information:
 - a. a product registration number as prescribed by 40 C.F.R. § 156.10(e);
 - b. a producing establishment number as prescribed by 40 C.F.R. § 156.10(f);
 - c. an ingredient statement as prescribed by 40 C.F.R. § 156.10(g);
 - d. directions for use as prescribed by 40 C.F.R. § 156.10(i).

10. During the inspection described in paragraph 7, the owner of Caribbean Supercenter provided the inspector with a signed affidavit stating that the Caribbean Supercenter had purchased the Royalty Black Disinfectant from Respondent.
11. On April 15, 2008, an officer or employee of the State of Florida, duly designated by the Administrator, conducted an inspection of Respondent's facility, located at 8841 NW 102 Street, Medley, Florida, in accordance with all applicable provisions of FIFRA Sections 8(b) and 9(a), 7 U.S.C. § 136f(b) and 136g(a).
12. During the inspection described in paragraph 11, Respondent provided invoices documenting that Respondent had distributed and sold four shipments of Royalty Black Disinfectant, including a shipment to Caribbean Supercenter, as follows:
 - a. Invoice number 4113, dated May 10, 2007, to Jamaica Groceries & Spices Imports;
 - b. Invoice number 1290, June 14, 2007, to Caribbean Supercenter;
 - c. Invoice number 6379, September 6, 2007, to B & M Bakery & West Indian Grocery;
 - d. Invoice number 6604, September 28, 2007, to S & A Caribbean Market.
13. Section 2(t) of FIFRA, 7 U.S.C. § 136(u), defines the term "pest" as "(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 microorganism (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)."
14. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" as, among other things, "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest."
15. Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), defines the term "antimicrobial

pesticide” to include “a pesticide that . . . is intended to . . . disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.”

16. Royalty Black Disinfectant is an “antimicrobial pesticide” as that term is defined in Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm).
17. As of the date of the inspections described in paragraphs 7 and 11, Royalty Black Disinfectant was not registered as a pesticide with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
18. During the inspection described in paragraph 11, Respondent’s owner confirmed that Respondent had imported the Royalty Black Disinfectant from Shahadat Ramiakhan Company, located in Navet Village, Rio Claro, Trinidad & Tobago.
19. Respondent did not file a Notice of Arrival of Pesticides and Devices (EPA Form 3540-1) (“Notice of Arrival”) with the EPA Administrator prior to the arrival in the United States of the Royalty Black Disinfectant shipment described in paragraph 18.

C. Alleged Violations

**COUNTS 1-4:
DISTRIBUTION OR SALE OF AN UNREGISTERED PESTICIDE**

20. Complainant incorporates the provisions set forth in paragraphs 1 through 19 by reference.
21. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
22. The phrase “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), 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.”

23. Respondent distributed or sold Royalty Black Disinfectant, a pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, on at least four occasions.
24. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and therefore is subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.

**COUNTS 5-8:
DISTRIBUTION OR SALE OF A MISBRANDED PESTICIDE**

25. Complainant incorporates the provisions set forth in paragraphs 1 through 19 by reference.
26. Under 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 authority of FIFRA does not appear on the label or is not prominently placed thereon.
27. Under Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is misbranded if its label does not bear the registration number assigned by EPA to each establishment in which it was produced.
28. Under Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded if its label does not include directions for use which are necessary for effectuating FIFRA’s purposes.
29. Under Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), a pesticide is misbranded if its label does not include the required ingredient statement.
30. As set forth in paragraph 9, the label on the Royalty Black Disinfectant distributed and sold by Respondent omitted information required under FIFRA, including the product registration number, the producing establishment number, an ingredient statement, and

instructions for use; thus, the Royalty Black Disinfectant was “misbranded” as that term is defined at Section 2(q) of FIFRA, 7 U.S.C. § 136(q)(2)(A).

31. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is a violation for any person in any state to distribute or sell to any person a misbranded pesticide.
32. Respondent distributed or sold a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least four occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.

**COUNT 9:
FAILURE TO FILE A NOTICE OF ARRIVAL OF PESTICIDES AND DEVICES**

33. Complainant incorporates the provisions set forth in paragraphs 1 through 19 by reference.
34. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations prescribed thereunder.
35. FIFRA Section 17(c) requires that the Secretary of the Treasury notify the EPA Administrator of the arrival of pesticides in the United States.
36. FIFRA Section 17(e), 7 U.S.C. § 136o(e) requires that the Secretary of the Treasury, in consultation with the EPA Administrator, promulgate regulations for the enforcement of FIFRA Section 17(c).
37. Pursuant to FIFRA Section 17(e), the Secretary of the Treasury, through the United States Customs Service, promulgated regulations for the enforcement of Section 17(c) of FIFRA at 19 C.F.R. §§ 12.110-12.117.
38. Under 19 C.F.R. § 12.112(a), an importer desiring to import pesticides or devices into the United States must submit a Notice of Arrival to the EPA Administrator prior to the arrival of the shipment in the United States.

39. Respondent imported the Royalty Black Disinfectant without filing a Notice of Arrival with the EPA Administrator.
40. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file a report required by FIFRA.
41. The Notice of Arrival is a report required by FIFRA that must be filed with the EPA Administrator prior to the arrival of a pesticide shipped into the United States.
42. Respondent violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136i.

D. Proposed Penalty

43. Section 14 of FIFRA, 7 U.S.C. § 136i, in conjunction with the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 et seq., and the regulations promulgated at 40 C.F.R. Part 19, authorizes the issuance of this Complaint for the assessment of a civil penalty. EPA proposes to assess a civil penalty of \$6,500 against the Respondent for each of the violations as set forth above in Counts 1-8. For Count 9, EPA proposes to assess a civil penalty of \$5,158 against the Respondent. The total civil penalty proposed by Complainant is rounded up to \$57,200.

E. Appropriateness of Proposed Penalty

44. EPA derived the proposed penalty set forth in paragraph 43 in accordance with Section 14 of FIFRA, 7 U.S.C. § 136i and EPA's December 2009 Enforcement Response Policy for FIFRA (the "Enforcement Response Policy"), as well as with the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 et seq., and the EPA regulations

promulgated at 40 C.F.R. Part 19 (providing for a 10% increase in the statutory maximum for violations of federal statutes after January 31, 1997, and a subsequent increase of 10% for violations occurring after March 15, 2004, and before January 12, 2009).

45. As directed by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and the Enforcement Response Policy, EPA considered the size of Respondent's business in determining the proposed penalty. Specifically, applying the procedure set forth in the Enforcement Response Policy, EPA classified Respondent as a "Category 2" business, which is the category applicable to a business with total annual revenue of between \$1,000,000 and \$10,000,000, taking into account all revenue from the entity and the entity's affiliates. If this categorization is incorrect, EPA will adjust the proposed penalty upon Respondent's submittal of reliable financial information indicating that another category is appropriate.
46. In addition, as instructed by FIFRA Section 14(a)(4) and the Enforcement Response Policy, EPA considered the gravity of the violations in determining the proposed penalty. Specifically, EPA considered available information regarding pesticide toxicity and the risk of human or environmental harm, as well as Respondent's compliance history and culpability.
47. In accordance with FIFRA Section 14(a)(4) and the Enforcement Response Policy, EPA has considered the effect of the proposed penalty on Respondent's ability to continue in business by reviewing publicly available financial information pertaining to Respondent's business, including information in the American Business Directory and in the company's D&B Business Information Report.

48. Upon information and belief, assessment of the proposed penalty will not impair Respondent's ability to continue in business. If Respondent would like for EPA to consider its financial condition further, Respondent will need to submit certified financial information to EPA, including, at a minimum, Respondent's corporate tax return statements from the previous three years and a financial statement. Insofar as this information demonstrates that mitigation of the proposed penalty is necessary to permit Respondent to continue in business, EPA will lower the proposed penalty accordingly.

II. NOTICE OF OPPORTUNITY FOR HEARING

A. Answer and Request for Hearing

49. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22 (the "Consolidated Rules") govern the procedures of the hearing. A copy of the Consolidated Rules accompanies this Complaint. Under these rules, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint and/or to contest the appropriateness of proposed penalty.
50. Respondent must file a written Answer within 30 days of its receipt of this Complaint to avoid being found in default (unless a Consent Agreement and Final Order resolving this matter is filed within the 30 days). Default constitutes Respondent's admission of all facts alleged in the Complaint, waives Respondent's right to a hearing, and may result in having the above-cited penalty assessed without further proceedings.
51. Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has

knowledge. If Respondent lacks knowledge of a particular fact and so states, the allegation is considered denied. Respondent's failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes Respondent's admission of the allegation. Respondent's Answer must also briefly state all facts and circumstances, if any, which constitute grounds for a defense and specifically request an administrative hearing (if desired). If Respondent denies any material fact or raises any affirmative defense, Respondent will be considered to have requested a hearing.

Respondent's written Answer to the Complaint must be sent to:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
Telephone: (404) 562-9511.

A copy of the Answer must also be sent to the EPA attorney assigned to this matter, who is authorized to receive service relating to this proceeding. The EPA attorney's contact information is as follows:

Keri Powell
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
Telephone: (404) 562-9567.

B. Informal Settlement Conference

52. Regardless of whether Respondent requests a hearing, Respondent may confer informally with Keri Powell at (404) 562-9567 to discuss the facts of this case, the amount of the proposed penalty, or the possibility of settlement. An informal settlement conference

does not, however, affect Respondent's obligation to file a written Answer to the Complaint.

53. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with you in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order ("CAFO"). A CAFO signed by EPA and the Respondent would be binding as to all terms and conditions specified therein upon signature by the EPA Regional Judicial Officer.
54. Please be advised that after the Complaint is issued, pursuant to Section 22.8 of the Consolidated Rules, any *ex parte* discussion of the merits of any action with the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, Presiding Officer, or any person likely to advise these officials in the decision of the case is prohibited. *Ex Parte* discussion as used herein means communicating to any of the above officials by one party to a proceeding without notice to and in the absence of the other party.

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C. Payment of Penalty

55. If Respondent chooses not to contest any of the allegations set forth in this Complaint by filing a written Answer within 30 days of receipt of the Complaint, an authorized official should sign and submit an Affidavit of Compliance (in lieu of an Answer) that the violations have been corrected and pay the proposed penalty via cashier's or certified check. The Affidavit of Compliance should be sent to the Regional Hearing Clerk, EPA, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303-8960. The check must be payable to the "Treasurer, United States of America" and sent to the following banking address:

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

The check shall reference on its face the Docket Number FIFRA 04-2011-3020.

May 5, 2011
Date

Carol G. Kamber for
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

I certify that on the date noted below, I hand-delivered the original and one copy of the foregoing Civil Complaint and Notice of Opportunity For Hearing, In the Matter of: United Global Trading, Inc., Docker No. FIFRA-04-2011-3020, to the Regional Hearing Clerk, Region 4. Furthermore, I certify that on the date listed below a copy of the Civil Complaint and Notice of Opportunity For Hearing and a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 were served to the following:

United Global Trading, Inc.
8841 NW 102nd Street
Medley, Florida 33178
Attn: Augustine Paldano

via Certified Mail, Return Receipt Requested

Augustine Paldano
Registered Agent, United Global Trading, Inc.
16752 SW 5th Way
Fort Lauderdale, FL 33326

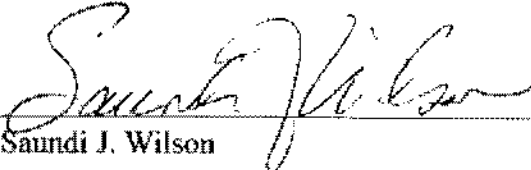
via Certified Mail, Return Receipt Requested

A copy of this Civil Complaint and Notice of Opportunity For Hearing was also sent via EPA's internal mail to the following:

Dawn Johnson
U.S. EPA, Region 4
Pesticides Section
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9017

Keri Powell
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9567

Date: 7/10/11


Saundi J. Wilson
U.S. EPA, Region 4
Office of Environmental Accountability