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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of

Hong Kong Supermarket, Inc.
Respondent.

Proceeding Under the Federal
Insecticide, Fungicide and
Rodenticide Act, as amended.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. FIFRA-02-2012-5205

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136l(a) (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter "CROP"). On March 23, 2012, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), issued a Complaint and Notice of Opportunity for Hearing ("the Complaint"), FIFRA-02-2012-5205, to Respondent, Hong Kong Supermarket, Inc. The Complaint alleged that Respondent committed two violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A), involving the sale or distribution in 2011 of the following unregistered pesticides: Lanju Mosquito Coil and Liby Chao Wei Colophony Toilet Cleaner.

Additionally, the Complaint alleged that the Respondent committed two violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E), involving the sale or distribution of each of the above products as misbranded pesticides. Complainant and Respondent agree that settling this matter by entering into this Consent Agreement/Final Order (“CA/FO”) pursuant to 40 C.F.R. Sections 22.18(b)(2) and (3) of the CROP, is an appropriate means of resolving this matter without litigation.

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Hong Kong Supermarket, Inc. (hereinafter “Hong Kong”), a New York corporation.
2. Respondent is a "person" as that term is defined in FIFRA Section 2(s), 7 U.S.C. Section 136(s), and is subject to FIFRA and the regulations promulgated thereunder.
3. Respondent “distributed or sold” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).
4. Respondent is a “wholesaler,” “dealer,” “retailer,” or “other distributor” within the meaning of Section 14 (a)(1) of FIFRA, 7 U.S.C. Section 136l(a)(1).

5. Respondent maintained and/or operated two “establishments,” as this term is defined in Section 2 (dd) of FIFRA, 7 U.S.C. Section 136(dd), located at 6023 8th Avenue, Brooklyn, NY 11220 and 157 Hester Street, New York City, NY 10013.
6. Respondent’s headquarters is located at 3711 Main Street, Flushing, NY 11354.
7. Section 2(t) of FIFRA, 7 U.S.C. Section 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism.
8. Section 2(u) of FIFRA, 7 U.S.C. Section 136(u), defines the term “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
9. Pursuant to Section 3 of FIFRA, 7 U.S.C. Section 136a, all pesticides intended for distribution or sale must be registered with EPA.
10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered with EPA.
11. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is misbranded.

12. 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 and understood by the ordinary individual under customary conditions of purchase and use.
13. On or about September 15, 2011, EPA conducted an inspection at Respondent's establishment located at 6923 8th Avenue, Brooklyn, NY.
14. During the inspection, EPA's inspector observed that there were 3 packages of Lanju Mosquito Coil being held for sale or distribution.
15. During the inspection, EPA's inspectors obtained evidence of the distribution and sale of the Lanju Mosquito Coil.
16. The Lanju Mosquito Coil had a picture of the Coil, which is used to repel mosquitos.
17. The Lanju Mosquito Coil was required to be registered with EPA.
18. The Lanju Mosquito Coil did not have an EPA registration number on its label.
19. The label on the Lanju Mosquito Coil was written mostly in Chinese language, and was not likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

20. On or about September 16, 2011, EPA conducted an inspection at Respondent's establishment located at 157 Hester Street, New York, NY 10013.
21. During the September 16, 2011 inspection, EPA's inspector observed that there were 15 500-gram bottles of "Liby Chao Wei Colophony Toilet Cleaner" (hereinafter "Toilet Cleaner") product being held for sale or distribution.
22. During the September 16, 2011 inspection, EPA's inspectors obtained evidence of the distribution and sale of the Toilet Cleaner.
23. The label of the Toilet Cleaner had the following description written in English: "Directions: Specially append anti-bacteria formula, remove common coliform organisms, staphylococcus other bacteria..."
24. The Toilet Cleaner was required to be registered with EPA.
25. The Toilet Cleaner did not have an EPA registration number on its label.
26. The label on the Toilet Cleaner was written mostly in Chinese language, and was not likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
27. Based on EPA's September 2011 inspections of Respondent's establishments in New York City, and EPA's review of the labels for the above-mentioned pesticide

products, EPA issued a Complaint against the Respondent, alleging that the Respondent distributed or sold the above unregistered and misbranded pesticides, in violation of Sections 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. Sections 136j(a)(1)(A) and 136j(a)(1)(E).

28. During a settlement meeting with EPA on July 23, 2012, Respondent informed EPA that, since the time of EPA's inspection in September 2011, it no longer sells or distributes the above-mentioned unregistered and misbranded pesticide products.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed that:

1. Respondent shall hereafter maintain compliance with the statutory provisions of FIFRA, 7 U.S.C. Section 136 *et seq.*, and its implementing regulations, including the requirements which prohibit the sale of unregistered pesticides and misbranded pesticides.
2. Respondent shall pay, by cashier's or certified check, a civil penalty in the total amount of Fifteen Thousand Dollars (\$15,000), payable to the "Treasurer, United States of America" on or before forty-five (45) days after the date of the EPA

Regional Judicial Officer's signature of the Final Order at the end of this document.

The check shall be identified with the notation of the name and docket number of this case as follows: In the Matter of Hong Kong Supermarket, Inc., Docket No. FIFRA-02-2012-5205.

The check shall be mailed to:

United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall also send copies of the payment to both:

Bruce Aber, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866; and

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

The payment must be received at the above address on or before the due date specified above (the date by which the payment must be received shall hereafter be referred to as its "due date").

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.
 - b. Furthermore, if any payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
 - c. A 6% per annum penalty also will be applied on any principal amount not paid within ninety (90) days of its due date.
3. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent (a) admits the jurisdictional allegations of the Complaint; and (b) neither admits nor denies the specific factual allegations in the Complaint and the EPA Findings of Fact and Conclusions of Law herein.

4. The civil penalties provided for herein are the penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, state or local law.
5. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint issued in this case. Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
6. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
7. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the civil penalty in accordance with the terms of this Consent Agreement.

8. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint, this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
9. The Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO; or b) to enforce a judgment relating to this CA/FO.
10. Respondent waives any right it might have to appeal this Consent Agreement and the accompanying Final Order.
11. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.
12. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this

matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

13. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.
14. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.
15. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement and Final Order.
16. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, its officers/officials, agents, authorized representatives and successors or assigns.

17. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.
18. Each party hereto agrees to bear its own costs and fees in this matter.
19. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

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RESPONDENT: Hong Kong Supermarket


BY: 
(Signature)

NAME: MYINT J. KYAW

TITLE: PRESIDENT

DATE: 11/12/2012

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement
and Compliance Assistance
U.S. Environmental Protection
Agency - Region 2

DATE: NOVEMBER 20, 2012

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FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th Floor
New York, New York 10007

DATE: November 20, 2012

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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

Original and Two Copies

Sybil Anderson
Headquarters Hearing Clerk
Office of Administrative Law Judges
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, D.C. 20460

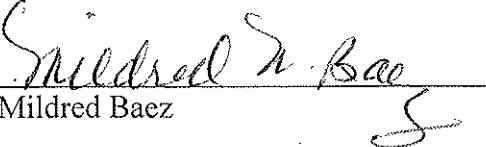
By Pouch Mail
& E-mail

Judge M. Lisa Buschmann
Office of Administrative Law Judges
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, D.C. 20460

Copy by Certified Mail/
Return Receipt Requested & E-mail:

Franklin K. Chiu, Esq.
The Law Firm of Hugh H. Mo, P.C.
225 Broadway, Suite 2702
New York, NY 10007

Dated: 11/21, 2012
New York, New York


Mildred Baez