UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

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| IN THE MATTER OF | ) | Docket No. FIFRA 07-2008-0004 |
| | ) | |
| CSR Company, Inc. | ) | |
| d/b/a American Veterinary Pharmaceuticals) | | |
| Company | ) | CONSENT AGREEMENT |
| 11143 Mockingbird Drive | ) | AND |
| Omaha, NE 68137 | ) | FINAL ORDER |
| | ) | |
| Respondent | ) | |

## CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII (EPA or Complainant), and CSR Company, Inc. d/b/a American Veterinary Pharmaceuticals Company (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

## FACTUAL ALLEGATIONS

### Jurisdiction and Statutory Requirements

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136*l*.

2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

### Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.

4. The Respondent is CSR Company, Inc. d/b/a American Veterinary Pharmaceuticals Company (American Vet), a pesticide distributor located at 11143 Mockingbird Drive in Omaha, Nebraska. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation qualified to do business in the state of Missouri.

## Violations

## General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) provides that it is unlawful for any person in any state to distribute or sell to any person any pesticide whose registration has been cancelled or suspended.

7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean 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.

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

9. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

10. Section 2(q)(1)(C) of FIFRA, 7 U.S.C. § 136(q)(1)(C), states a pesticide is misbranded if it is an imitation of, or is offered for sale under the name of another pesticide.

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

12. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with,

together with any requirements imposed under Section 3(d) of this Act, are adequate to protect health and the environment.

13. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of this Act, is adequate to protect health and the environment.

14. FRONTLINE® TOP SPOT (FOR DOGS & PUPPIES UP TO 22 lbs., FOR DOGS, 23-44 lbs., FOR DOGS 45-88lbs, FOR DOGS 89-132lbs.), is a pesticide registered under EPA Registration Number (EPA Reg. No.) 65331-3, to registrant, Merial Limited, Iselin, New Jersey. Merial Limited is now located in Duluth, Georgia. The label submitted by Merial Limited for EPA Reg. No. 65331-3 was accepted by EPA on August 11, 2000, and was the label in effect for EPA Reg. No. 65331-3 on May 19, 2004.

15. FRONTLINE® TOP SPOT FOR DOGS, (FOR DOGS AND PUPPIES 10 WEEKS OR OLDER AND UP TO 22 lbs.- stickered) distributed and/or held for sale by Respondent is an imitation of the EPA registered pesticide referred to in Paragraph 14 and is misbranded as defined in Paragraphs 9 through 13.

16. On or about May 19, 2004, a representative of the Michigan Department of Agriculture (MDA) conducted an inspection at the Pet Supplies Plus store located at 4161 24th Avenue, Fort Gratiot, Michigan, to determine the status of that company's compliance with FIFRA. At the time of the inspection, distribution and/or sales of the pesticide mentioned in Paragraph 15 were documented.

17. Pet Supplies Plus store's Invoice No. OT05756009, dated May 7, 2004, documents the receipt of 20 packages of Frontline® product from the Respondent. Two of the twenty boxes were found to be the pesticide referenced in Paragraph 15. Photographs taken during the inspection referenced in Paragraph 16 document the pesticides are imitations of products referenced in Paragraph 14 and were misbranded as follows:

a) the words "usage veterinaire" are printed on the internal packaging;
b) the active and inert ingredients statement, signal work "Caution and Keep Out of Reach of Children" statement, and net contents of individual applicator tubes is stickered on the external packaging and not printed on the external packaging;
c) metric units of measure were used in listing dosages of active ingredients;
d) product is not packaged in the required child resistant packaging; and,
e) the Lot No. on the external packaging does not match the Lot No. on the internal packaging and individual applicator tubes.

Labels applied to these photographed products are not consistent with the EPA accepted label for Merial FRONTLINE ® EPA Reg. No. 65331-3 pet products.

Count 1

18. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

19. On or about May 19, 2004, the MDA representative collected Invoice No. OT05756009, showing that the Respondent had sold 2 boxes, containing three 0.67 ml. or 67mg. pipettes, of the imitation pesticide product referred to in Paragraphs 15 and 17 to Pet Supplies Plus in Fort Gratiot, Michigan on May 7, 2004.

20. The imitation pesticide product FRONTLINE® TOP SPOT FOR DOGS, (FOR DOGS AND PUPPIES 10 WEEKS OR OLDER AND UP TO 22 lbs.- stickered) referred to in Paragraphs 15 and 17 were not encompassed within the terms of the product registration under EPA Reg. No. 65331-3 and required separate product registration under Section 3 of FIFRA.

21. Title 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the Agency before the product as modified may be distributed or sold.

22. The imitation pesticide product referred to in Paragraph 15 was modified as described in Paragraph 17 and had not been approved by EPA for sale or distribution.

23. Respondent violated Section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A) by distributing or selling the unregistered pesticide product referred to in Paragraph 15.

Count 2

24. The facts stated in paragraphs 6 through 23 are realleged and incorporated as if fully stated herein.

25. On or about May 19, 2004, the MDA representative collected Invoice No. OT05756009, showing that the Respondent had sold 2 boxes, containing three 0.67 ml. or 67mg. pipettes, of the imitation pesticide product referred to in Paragraphs 15 and 17 to Pet Supplies Plus in Fort Gratiot, Michigan on May 7, 2004.

26. The imitation pesticide product referred to in Paragraph 15 was misbranded as described in Paragraph 17.

27. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing the imitation pesticide product which was adulterated or misbranded as described in Paragraphs 15 and 17.

## CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in the Final Order. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty described in Paragraph 1 of the Final Order below, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of $15 will be imposed after thirty (30) days

and an additional $15 will be charged for each subsequent thirty (30) day period. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently four percent (4%) per annum for the period January 1, 2007 through December 31, 2007) on the unpaid balance until such civil penalty and accrued interest are both paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

## FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136*l*, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay a civil penalty for the violations cited herein, in the amount of Five Thousand Two Hundred Dollars ($5,200.00). The payment of the civil penalty shall be made within thirty days of the effective date of this Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

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

3. The payment shall reference Docket Number, FIFRA 07-2008-0004 and In the Matter of CSR Company, Inc d/b/a American Veterinary Pharmaceuticals Company. Copies of the check shall be forwarded to:

Jennifer Trotter
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII

901 North 5th Street
Kansas City, Kansas 66101

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Betty J. Berry
for William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date: 01/14/08

By: Jennifer Trotter
Jennifer Trotter
Attorney
Office of Regional Counsel

Date: 1/15/08

RESPONDENT:
CSR Company, Inc
d/b/a American Pharmaceuticals Company

By: [illegible]

Title: C.E.O.

Date: 12-21-07

IT IS SO ORDERED. This Order shall become effective immediately.

ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: January 15, 2008

IN THE MATTER OF CSR Company, Inc., d/b/a American Veterinary Pharmaceuticals Company, Respondent
Docket No. FIFRA-07-2008-0004

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Jennifer Trotter
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

McClain Bryant
Attorney at Law
Blackwell Sanders LLP
4801 Main Street, Suite 1000
Kansas City, Missouri 64112

Dated: 1/16/08

Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7