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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In re FIFRA Section 6(b) Notice of Intent to Cancel Registrations of, and Notice of Denial of Applications for, Certain Rodenticide Bait Products	)))))	FIFRA Docket No. 661

MOTION FOR LEAVE TO FILE A MEMORANDUM IN SUPPORT OF RECKITT'S MOTION FOR AN EXPEDITED DETERMINATION THAT EPA'S EXISTING STOCKS DECISION IS WITHIN THE SCOPE OF THE HEARING

Do it Best Corp. ("Retailer"), Louisville Apartment Association, and Greater Cincinnati Northern Kentucky Apartment Association ("Users") request leave to file a memorandum in support of Reckitt Benckiser LLC's ("Reckitt") Motion for an Expedited Determination that EPA's Existing Stocks Decision is Within the Scope of the Hearing ("Motion"). The Rules of Practice, 40 C.F.R. § 164.60(b), provide that "[w]ithin 10 days after service of any motion filed pursuant to this part, or within such other time as may be fixed by . . . the Administrative Law Judge, any party may serve and file an answer to the motion." Retailer and Users were unable to file a response within the 10-day period and therefore are requesting leave to file a memorandum after the prescribed period. In support of this Motion, Counsel represents as follows:

1. Although Reckitt's Motion was filed on April 12, 2013, Counsel was not retained until May 7, 2013.
2. Both Retailer and Users have a substantial interest in this issue. Each of these entities specifically included existing stocks issues in their objections and requests for a hearing. Do it Best Corp. Hearing Request at 2; Greater Cincinnati Northern

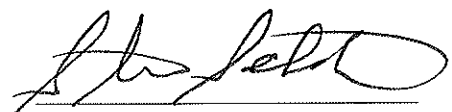
Kentucky Apartment Association Hearing Request at 2; Louisville Apartment Association Hearing Request at 2. Retailer, in fact, stated that this issue was of greater concern than the issue of cancellation itself. *See* Do it Best Corp. Hearing Request at 2 (ban on selling existing stocks is "even more concerning" because it would penalize retailers and distributors).

3. Retailer and Users have unique perspectives on this issue which should be considered by the Administrative Law Judge when deciding Reckitt's Motion. EPA's Existing Stocks Decision would mean that Retailer would face the economic consequence of dealing with unsold stocks of Reckitt's products, products that were legal when Retailer purchased them. Users would find themselves deprived of access to products on which they have depended for many years for effective rodent control. None of the other parties in this proceeding represent the interests of retailers and consumers.

Prior to filing this motion, the undersigned contacted Reckitt and EPA as to the relief requested herein. Reckitt has consented to the filing of this Memorandum. EPA has stated that it does not consent and will file a response.

Dated: May 13, 2013

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 2013, the original and two copies of the foregoing *Motion for Leave to File a Memorandum in Support of Reckitt's Motion for an Expedited Determination that EPA's Existing Stocks Decision is Within the Scope of the Hearing* were filed with the Headquarters Hearing Clerk, and a copy hand delivered to the office of:

The Honorable Susan L. Biro
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1300 Pennsylvania Avenue, NW
Washington, DC 20460

I further certify that true and correct copies were sent by first class mail and e-mail to:

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