

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TZUMI INNOVATIONS, LLC,

Plaintiff/Counterclaim Defendant,

-v-

MICHAEL S. REGAN,¹ in his Official Capacity as
Administrator of the United States Environmental
Protection Agency,

Defendant,

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY,

Defendant/Counterclaim Plaintiff.

21 Civ. 0122 (LGS)

**STIPULATION AND
ORDER OF SETTLEMENT**

¹ Michael S. Regan, who became the Administrator of the Environmental Protection Agency on March 11, 2021, is automatically substituted for former Administrator Andrew R. Wheeler as the defendant in this action. *See* Fed. R. Civ. P. 25(d).

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WHEREAS, Plaintiff Tzumi Innovations, LLC (“Tzumi”) filed a Complaint on January 7, 2021, as amended on January 25, 2021 (“Amended Complaint”), alleging that the United States Environmental Protection Agency (“EPA”) acted arbitrarily, capriciously, and in violation of due process in taking steps to enforce the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136, *et seq.*, with respect to one of Tzumi’s products, Wipe Out! Wipes, which Tzumi maintained were hand wipes that should be regulated solely by the United States Food and Drug Administration;

WHEREAS, on July 30, 2021, the United States District Court for the Southern District of New York, Judge Lorna G. Schofield, issued an Opinion and Order denying Tzumi’s motion for a preliminary injunction on the basis that Tzumi was unlikely to succeed on the merits and granting in part and denying in part EPA’s cross-motion to dismiss the Amended Complaint;

WHEREAS, concurrently with lodging this Stipulation and Order, the United States of America (“United States”), on behalf of the EPA, is filing a counterclaim (“Counterclaim”) alleging that Tzumi violated FIFRA by distributing and selling three unregistered pesticides, Wipe Out! Wipes, Wipe Out! Multi-Surface Wipes, and Wipe Out! Multi-Surface Decontaminant Spray; and

WHEREAS, the Parties recognize, and the Court by entering this Stipulation and Order finds, that this Stipulation and Order has been negotiated by the Parties in good faith and will avoid further litigation between the Parties and that this Stipulation and Order is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 7 U.S.C. § 136n(c) and 28 U.S.C. §§ 1331 and 1345, and over the Parties. Venue lies in this District, pursuant to 28 U.S.C. §§ 1391, 1395(a), & 1402(a), because Tzumi resides, is located in, and conducts business in this judicial district. For purposes of this Stipulation and Order, or any action to enforce this Stipulation and Order, Tzumi consents to the Court’s jurisdiction over this Stipulation and Order and any such action and over Tzumi and consents to venue in this judicial district.

II. APPLICABILITY

2. The obligations of this Stipulation and Order apply to and are binding upon the United States, and upon Tzumi and any successors, assigns, or other entities or persons otherwise bound by law.

3. Tzumi shall provide a copy of this Stipulation and Order to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Stipulation and Order, as well as to any contractor retained to perform work required under

this Stipulation and Order. Tzumi shall condition any such contract upon performance of the work in conformity with the terms of this Stipulation and Order.

4. In any action to enforce this Stipulation and Order, Tzumi shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Stipulation and Order.

III. DEFINITIONS

5. Terms used in this Stipulation and Order that are defined in FIFRA or in regulations promulgated pursuant to FIFRA have the meanings assigned to them in FIFRA or such regulations, unless otherwise provided in this Stipulation and Order. Whenever the terms set forth below are used in this Stipulation and Order, the following definitions apply:

- a. “Amended Complaint” shall mean the First Amended Complaint filed by Tzumi on January 25, 2021, in this action.
- b. “Counterclaim” shall mean the amended answer with counterclaim filed by the United States with the consent of Tzumi concurrently with the lodging of this Stipulation and Order.
- c. “Date of Lodging” shall mean the date this Stipulation and Order is filed for lodging with the Clerk of the Court for the United States District Court for the Southern District of New York.
- d. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Stipulation and Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
- e. “Effective Date” shall have the definition provided in Section XI.
- f. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- g. “FIFRA” shall mean the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 to 136y.
- h. “Paragraph” shall mean a portion of this Stipulation and Order identified by an Arabic numeral.
- i. “Parties” shall mean the United States and Tzumi.
- j. “Section” shall mean, except when citing a provision of the FIFRA or other statute or regulation, a portion of this Stipulation and Order identified by a Roman numeral.

- k. “Stipulation and Order” shall mean this Stipulation and Order of Settlement and all appendices attached hereto (listed in Section XXI), and all modifications made effective in accordance with Section XIII.
- l. “Tzumi” shall mean plaintiff Tzumi Innovations, LLC; any entity controlled by Tzumi; and any successors to Tzumi or such entities.
- m. “United States” shall mean the United States of America, acting on behalf of EPA.
- n. “Wipe Out! Wipes” shall mean fresh scent wipes, Tzumi item number 9599 bearing Universal Product Code (UPC) 84135119599 and 841351195997; lemon scent wipes, Tzumi item number 9597 bearing UPC 84135119597 and 841351195973; and any product identical or substantially similar in composition and labeling that was marketed, distributed and/or sold by Tzumi and/or its subsidiaries or related entities at any time – past, present, and future.
- o. “Wipe Out! Multi-Surface Wipes” shall mean fresh scent wipes, Tzumi item number 9559-MEN bearing UPC 841351195591; lemon scent wipes, Tzumi item number 9557-MEN bearing UPC 841351195577; and any product identical or substantially similar in composition and labeling that was marketed, distributed and/or sold by Tzumi and/or its subsidiaries or related entities at any time – past, present, and future.
- p. “Wipe Out! Multi-Surface Decontaminant Spray” shall mean spray bottles of liquid formula in lemon scent, Tzumi item number WP0021-LEM bearing UPC 840139901364; spray bottles of liquid formula in lavender scent, Tzumi item number WP0021-LAV bearing UPC 840139901379; spray bottles of liquid formula in fresh scent, Tzumi item number WP0021-FRE bearing UPC 840139901362; and any product identical or substantially similar in composition and labeling that was marketed, distributed and/or sold by Tzumi and/or its subsidiaries or related entities at any time – past, present, and future.

IV. CIVIL PENALTY

6. Within 60 Days after the Effective Date, Tzumi shall pay the sum of \$1.5 million as a civil penalty pursuant to 7 U.S.C. § 136l(a), together with interest accruing from the date on which the Stipulation and Order is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

7. Tzumi shall pay the civil penalty due by electronic funds transfer in accordance with instructions to be provided to Tzumi by the United States Attorney’s Office for the Southern District of New York after the Effective Date. The payment instructions will include a Consolidated Debt Collection System (“CDCS”) number, which Tzumi shall use to identify all payments required to be made in accordance with this Stipulation and Order.

8. At the time of payment, Tzumi shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov; (ii) to the United States via email in accordance with Section X; and (iii) to EPA in accordance with Section X. Such notice shall state that the payment is for the civil penalty owed pursuant to the Stipulation and Order in *Tzumi Innovations, LLC v. Michael S. Regan, et al.*, 21 Civ. 122 (SDNY) and shall reference the civil action number, the CDCS Number, and USAO No. 2021V00052.

9. Tzumi shall not deduct any penalties paid under this Stipulation and Order pursuant to this Section in calculating its federal income tax.

V. ADMISSIONS

10. Tzumi admits, acknowledges, and accepts responsibility for the following:
- a. In 2020, Tzumi introduced new product lines to the domestic household market in an effort to respond to the public's increased demand for disinfectant products during the COVID-19 public health crisis. The new products Tzumi distributed or sold included Wipe Out! Wipes, Wipe Out! Multi-Surface Wipes, and Wipe Out! Multi-Surface Decontaminant Spray.
 - b. Wipe Out! Wipes, Wipe Out! Multi-Surface Wipes, and Wipe Out! Multi-Surface Decontaminant Spray have never been registered as pesticides with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.
 - c. From at least August through December 2020, Tzumi distributed 4,895,184 units of Wipe Out! Wipes to Home Depot bearing a label stating on the front in part "Wipe Out Antibacterial Wipes" and "KILLS GERMS FAST*" and on the back in part "To decrease bacteria on the skin that could cause disease"; "Cleans and sanitizes"; "KILLS 99.9% OF GERMS*"; "*Escherichia Coli (E. coli), Staphylococcus Aureus (Staph), Candida Albicans"; and "Use it Anytime, Anywhere."
 - d. In early June 2020, a Tzumi employee drafted language to be included in the product description for Wipe Out! Wipes on Home Depot's website. The language stated, in part, that Wipe Out! Wipes "clean and disinfect with antibacterial power that kills 99.9% of viruses and bacteria that can live on surfaces up to 48 hours" and that "[t]hese all purpose wipes remove common allergens, germs and messes on surfaces like kitchen counters, bathroom surfaces and more." Home Depot in fact posted this description on its website. On or about August 19, 2020, Tzumi provided Home Depot with an updated product description that included the phrase "Hand Wipes" and removed all references to cleaning household surfaces. Tzumi believes Home Depot implemented some of these changes to the product description on its website on or about September 1, 2020.
 - e. Tzumi shipped Wipe Out! Wipes to Home Depot in early August 2020 for resale by Home Depot, but for reasons not pertinent to this dispute or

settlement agreement, Tzumi believes Home Depot did not sell or ship any product to consumers prior to August 19, 2020.

- f. From October through November 2020, Tzumi sold 472,281 units of Wipe Out! Multi-Surface Wipes bearing a label that displayed the words “active ingredient” and “purpose: antibacterial” and graphics of household appliances, bathroom fixtures, and surfaces.
- g. From February 2021 through April 2021, Tzumi sold 62,796 units of Wipe Out! Multi-Surface Decontaminant Spray that stated on its label “Controls Algae Harmful Bacteria” (sic) and “... spray directly on the surface and let stand ... ten minutes for antimicrobial response.”

VI. COMPLIANCE REQUIREMENTS

11. Tzumi will not distribute or sell an unregistered pesticide, nor will it state, imply, or otherwise claim that an unregistered substance or mixture of substances it distributes or sells or has distributed or sold (including but not limited to Wipe Out! Wipes, Wipe Out! Multi-Surface Cleaning Wipes, and Wipe Out! Multi-Surface Decontaminant Spray) “prevents, destroys, repels, or mitigates” any “pest” as those terms are used in FIFRA. For avoidance of doubt, this prohibition includes claims that substances disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms, except to the extent that they are on or in living persons or other living animals.

12. Within 30 days of the Effective Date, Tzumi will issue the public service announcement, including an attachment containing photographs of the products, attached as Appendix A. The public service announcement and attachment will be posted on a separate “Important Correction Notice” webpage on the Tzumi website and on the websites of its subsidiaries and related entities and distributed by U.S. mail and e-mail to all retailers to whom Tzumi and/or its subsidiaries or related entities has sold and/or distributed the above-listed products in the United States prior to the date that the public service announcement is issued. The public service announcement and attachment shall be posted on the above-referenced websites for a period of one year following the Effective Date. Additionally, Tzumi shall purchase advertising on Google consisting of display and search campaigns (“Google campaign”) that links to the public service announcement and attachment on Tzumi’s website. The Google campaign must be reviewed and approved by the United States and shall run from the Effective Date until it has been displayed at least one million times and for no less than 90 days (“the campaign period”), whichever is later; there shall be no upper limitation constraining the number of times the Google campaign is displayed. The Google campaign shall be designed in such a way that it is displayed any time a search is executed for the following terms (with or without quotation marks or capitalization): Wipe Out! Wipes, Tzumi Wipe Out! Wipes, Tzumi hand wipes, Tzumi surface wipes, Tzumi disinfecting wipes, and Tzumi antibacterial wipes. Additionally, up to a maximum assigned budget of \$30,000.00, the Google campaign shall be displayed any time Tzumi products included in this Stipulation and Order are returned as part of a search. The Google campaign shall run only in the United States, with no geographic or 24-hour time limitations placed on the Google campaign. At the conclusion of the campaign period, Tzumi shall provide to EPA a Google campaign report detailing its methodology in

implementing the campaign, including the number of people the advertisement was designed to reach, types of advertising purchased, and metrics such as the number of audience reports, Google impressions, and click-through rates.

13. Within 30 days of the Effective Date, Tzumi will issue the statement attached as Appendix B, including an attachment containing photographs of and other identifying information relating to the products, to all downstream retailers of the above-listed products. The statement and attachment will be posted on a separate “Important Correction Notice” webpage on the Tzumi website and on the websites of its subsidiaries and related entities and distributed by U.S. mail and e-mail to all retailers to whom Tzumi and/or its subsidiaries or related entities has sold and/or distributed the above-listed products in the United States prior to the date that the statement is issued. The retailer statement and attachment shall be posted on the above-referenced websites for a period of one year following the Effective Date.

VII. REPORTING REQUIREMENTS

14. Within one week of issuing the public service announcement and statement described in Paragraphs 12 and 13, Tzumi shall report to EPA and the United States at the addresses set forth in Section X (Notices) that it has done so. This report shall include the names of the entities who received the public service announcement and the downstream retailers who received the statements and the dates on which they were received.

15. If Tzumi violates Paragraph 11, or has reason to believe that it has done so, it shall, within 30 Days, report to EPA and the United States at the addresses set forth in Section X (Notices). This report shall include a description of any non-compliance, and an explanation of the violation’s likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation and its effects, or to prevent future non-compliance. For any remedial steps still to be taken, the report shall include a schedule for taking such actions.

16. If any violation of Paragraph 11 of this Stipulation and Order may pose an immediate threat to the public health or welfare or the environment, Tzumi shall notify EPA by informing Kristen Ridarick, Environmental Engineer, EPA, Region 2 by telephone at 732-321-4459 or by email to ridarick.kristen@epa.gov, as soon as possible, but no later than 24 hours after Tzumi first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

17. Each report submitted by Tzumi under this Section shall be signed by a Tzumi official and include the following certification:

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal

knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

18. The reporting requirements of this Stipulation and Order do not relieve Tzumi of any reporting obligations required by FIFRA or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

19. Any information provided pursuant to this Stipulation and Order may be used by the United States in any proceeding to enforce the provisions of this Stipulation and Order and as otherwise permitted by law.

VIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

20. Tzumi's Amended Complaint is hereby dismissed with prejudice.

21. The Stipulation and Order resolves the civil claims of the United States for violations alleged in the Counterclaim through the Date of Lodging.

22. The United States reserves all legal and equitable remedies available to enforce the provisions of this Stipulation and Order. This Stipulation and Order shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under FIFRA or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 21. For avoidance of doubt, the United States reserves all legal and equitable remedies to address any violations posed by any products sold by Tzumi other than those violations through the Date of Lodging that are alleged in the Counterclaim with respect to Wipe Out! Wipes, Wipe Out! Multi-Surface Wipes, and Wipe Out! Multi-Surface Decontaminant Spray.

23. In any subsequent administrative or judicial proceeding initiated by the United States or EPA for injunctive relief, civil penalties, or other appropriate relief relating to violations of FIFRA by Tzumi, Tzumi shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or EPA in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 21.

24. This Stipulation and Order is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Tzumi is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Tzumi's compliance with this Stipulation and Order shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Stipulation and Order, warrant or aver in any manner that Tzumi's compliance with any aspect of this Stipulation and Order will result in compliance with provisions of FIFRA or with any other provisions of federal, State, or

local laws, regulations, or permits. Without limiting the forgoing, nothing in this Stipulation and Order constitutes a representation by the United States regarding whether any Tzumi product may be properly sold for any purpose under the Federal Food, Drug, and Cosmetic Act and related regulations.

25. This Stipulation and Order does not limit or affect the rights of Tzumi or of the United States against any third parties, not party to this Stipulation and Order, nor does it limit the rights of third parties, not party to this Stipulation and Order, against Tzumi, except as otherwise provided by law.

26. This Stipulation and Order shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Stipulation and Order.

27. Tzumi acknowledges that the United States has relied on the Declaration of Isaac Saka (“Declaration”), dated May 5, 2022, provided by Tzumi to the United States, in entering into the Stipulation and Order, and that the information in the Declaration was material to the United States’ decision to agree to the terms contained herein. Accordingly, the United States reserves its right to seek additional relief judicially or administratively with respect to the matters contained in the Counterclaim if the Declaration is materially inaccurate or contains material omissions, notwithstanding Paragraph 21. Any such relief would be in addition to, and not in lieu of, Tzumi’s agreements under this Stipulation and Order. Tzumi reserves all of its defenses to such additional relief except the defense that Paragraph 21 bars such relief.

IX. COSTS

28. The Parties shall bear their own costs of this action, including attorneys’ fees, except that the United States shall be entitled to collect the costs (including attorneys’ fees) incurred in any future action necessary to collect any portion of the civil penalty due but not paid by Tzumi.

X. NOTICES

29. Unless otherwise specified in this Stipulation and Order, whenever notifications, submissions, or communications are required by this Stipulation and Order, they shall be made in writing and sent by mail or email, addressed as follows:

As to the United States by email: allison.rovner@usdoj.gov
Re: USAO No. 2021V00052

and

eescdcopy.enrd@usdoj.gov
Re: DJ # 1-12610

As to EPA by email: yu.jeannie@epa.gov

and

ridarick.kristen@epa.gov

As to Tzumi:

Tzumi Innovations, LLC
Attn: Isaac Saka
16 E. 34th Street, 3rd Floor
New York, NY 10016

Copy to:

Sills Cummis & Gross, P.C.
Attn: Mark Olinsky, Esq.
1 Riverfront Plaza
Newark, N.J. 07102

30. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

31. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Stipulation and Order or by mutual agreement of the Parties in writing.

XI. EFFECTIVE DATE

32. The Effective Date of this Stipulation and Order shall be the date upon which this Stipulation and Order is entered by the Court or a motion to enter the Stipulation and Order is granted, whichever occurs first, as recorded on the Court's docket.

XII. RETENTION OF JURISDICTION

33. The Court shall retain jurisdiction over this case until termination of this Stipulation and Order for the purpose of resolving disputes arising under this Stipulation and Order or entering orders modifying this Stipulation and Order, or effectuating or enforcing compliance with the terms of this Stipulation and Order.

XIII. MODIFICATION

34. The terms of this Stipulation and Order, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties, except that Tzumi and EPA may agree to non-material modifications of the form and text of the public service announcement appearing at Appendix A and the statement appearing at Appendix B. Where a modification of the Stipulation and Order, including its appendices, constitutes a material change to this Stipulation and Order, it shall be effective only upon approval by the Court.

XIV. TERMINATION

35. After Tzumi has completed the requirements of Paragraphs 12 and 13 and has maintained continuous satisfactory compliance with this Stipulation and Order for a period of two years, and has paid the civil penalty as required by this Stipulation and Order, Tzumi may serve upon the United States a Request for Termination, stating that Tzumi has satisfied those requirements, together with all necessary supporting documentation.

36. Following receipt by the United States of Tzumi's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Tzumi has satisfactorily complied with the requirements for termination of this Stipulation and Order. If the United States agrees that the Stipulation and Order may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Stipulation and Order. If the United States does not agree, the Parties may present the dispute to the Court.

XV. PUBLIC PARTICIPATION

37. This Stipulation and Order shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Stipulation and Order disclose facts or considerations indicating that the Stipulation and Order is inappropriate, improper, or inadequate. Tzumi consents to entry of this Stipulation and Order without further notice and agrees not to withdraw from or oppose entry of this Stipulation and Order by the Court or to challenge any provision of the Stipulation and Order, unless the United States has notified Tzumi in writing that it no longer supports entry of the Stipulation and Order.

XVI. SIGNATORIES/SERVICE

38. Each undersigned representative of Tzumi and the U.S. Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Stipulation and Order and to execute and legally bind the Party he or she represents to this document.

39. This Stipulation and Order may be signed in counterparts, and its validity shall not be challenged on that basis. Tzumi agrees to accept service of process by mail with respect to all matters arising under or relating to this Stipulation and Order and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Tzumi need not file an answer to the Counterclaim in this action unless or until the Court expressly declines to enter this Stipulation and Order.

XVII. INTEGRATION

40. Except as provided in Paragraph 27, this Stipulation and Order constitutes the entire agreement among the Parties regarding the subject matter of the Stipulation and Order and supersedes all prior representations, agreements and understandings, whether oral or written, concerning the subject matter of the Stipulation and Order herein.

XVIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

41. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of paragraph 3, Section VI, Section VII (except paragraph 16), Appendix A, and Appendix B is restitution, remediation, or required to come into compliance with law.

XIX. HEADINGS

42. Headings to the Sections and Subsections of this Stipulation and Order are provided for convenience and do not affect the meaning or interpretation of the provisions of this Stipulation and Order.

XX. FINAL JUDGMENT

43. Upon approval and entry of this Stipulation and Order by the Court, this Stipulation and Order shall constitute a final judgment of the Court as to the United States and Tzumi.

XXI. APPENDICES

44. The following Appendices are attached to and part of this Stipulation and Order:

“Appendix A” is the form and text of the public service announcement, including an attachment containing photographs of the products, referred to in Paragraph 12, and

“Appendix B” is the form and text of the retailer statement, including an attachment containing photographs of and other identifying information relating to the products, referred to in Paragraph 13.

Dated and entered this __ day of _____, 2022


UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

June 13, 2022
Dated

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

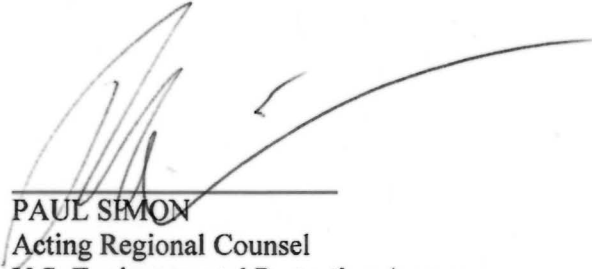
By:



ALLISON M. ROVNER
Assistant United States Attorney
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Fax: (212) 637-2750
Email: allison.rovner@usdoj.gov

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

5/24/22
Dated



PAUL SIMON
Acting Regional Counsel
U.S. Environmental Protection Agency
Region 2, 290 Broadway
New York, New York 10007

JEANNIE M. YU
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2, 290 Broadway
New York, New York 10007

FOR TZUMI INNOVATIONS, LLC:

5/17/22
Dated



ISAAC SAKA
Vice President

APPENDIX A

PUBLIC SERVICE ANNOUNCEMENT

Tzumi Innovations, LLC (“Tzumi”) issues this public service announcement regarding three of its products:

- Wipe Out! Wipes,
- Wipe Out! Multi-Surface Wipes, and
- Wipe Out! Multi-Surface Decontaminant Spray.

Photographs of the labels for these products are attached to this public service announcement.

These products should not be used to disinfect or sanitize surfaces.

The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) governs “pesticides,” which include products intended to prevent, destroy, repel or mitigate viruses, bacteria, or other microorganisms except for viruses, bacteria, and microorganisms in or on living people or animals. It is illegal to sell or distribute a pesticide without first registering it with EPA as a pesticide under Section 3 of FIFRA. 7 U.S.C. § 136a. A registration is only approved by EPA after rigorous review to determine that the pesticide is both safe and effective when used as indicated on the label.

Tzumi’s Wipe Out! Wipes, Wipe Out! Multi-Surface Wipes, and Wipe Out! Multi-Surface Decontaminant Spray have not been registered with EPA as pesticides. Therefore, these products may not be sold or distributed as intended to eliminate microorganisms on surfaces and should not be used for this purpose.

Wipe Out! Wipes are hand wipes to be used for skin application only and should not be used as a disinfectant or sanitizer on surfaces.

Wipe Out! Multi-Surface Wipes are cleaning wipes and should not be used as a disinfectant or sanitizer on surfaces.

Wipe Out! Multi-Surface Decontaminant Spray is a cleaning spray and should not be used as a disinfectant or sanitizer on surfaces.

If you have any questions, please contact Isaac Saka at 646-351-1960.

Attachment to Public Service Announcement

Wipe Out! Wipes



Wipe Out! Multi-Surface Wipes



Attachment to Public Service Announcement

Wipe Out! Multi-Surface Decontaminant Spray



APPENDIX B

RETAILER STATEMENT

Tzumi Innovations, LLC (“Tzumi”) issues this retailer statement regarding three of its products:

- Wipe Out! Wipes,
- Wipe Out! Multi-Surface Wipes, and
- Wipe Out! Multi-Surface Decontaminant Spray.

Photographs of the labels and other identifying information for these products are attached to this retailer statement.

Tzumi cautions retailers that these products are not registered pesticides and cannot be lawfully sold as household disinfectants.

The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) governs “pesticides,” which include products intended to prevent, destroy, repel or mitigating viruses, bacteria, or other microorganisms except for viruses, bacteria, and microorganisms in or on living people or animals. It is illegal to sell or distribute a pesticide without first registering it with EPA as a pesticide under Section 3 of FIFRA. 7 U.S.C. § 136a. A registration is only approved by EPA after rigorous review to determine that the pesticide is both safe and effective when used as indicated on the label.

Tzumi’s Wipe Out! Wipes, Wipe Out! Multi-Surface Wipes, and Wipe Out! Multi-Surface Decontaminant Spray have not been registered with EPA as pesticides. Therefore, these products may not be sold or distributed as intended to eliminate microorganisms on surfaces and should not be used for this purpose.

Wipe Out! Wipes are hand wipes to be used for skin application only and should not be used as a disinfectant or sanitizer for surfaces. Retailers are cautioned to ensure that their continued distribution and sale of Wipe Out! Wipes conform with this intended use and with FIFRA. If sold in physical stores, this product should be removed from the disinfectant/surface cleaning section and displayed in the personal care or similarly appropriate section of the store. Additionally, retail websites providing online sales or describing products available for sale in physical stores should classify the wipes under personal care or similarly appropriate product webpages.

If you have existing inventory of Wipe Out! Multi-Surface Wipes with the older label (see attached label), please contact Tzumi to receive updated labels before selling such units in retail stores or on-line.

Wipe Out! Multi-Surface Decontaminant Spray should not be sold in retail stores or on-line.

If you have any questions, please contact Isaac Saka at 646-351-1960.

Attachment to Retailer Statement

Wipe Out! Wipes



Wipe Out! Item # 9599
 Distributed by
 tzumi Innovations
 NY, NY 10015
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 Made in China



8 4135119599 17

841351195997
 Also under UPC: 00084135119599

Wipe Out! Item # 9597
 Distributed by
 tzumi Innovations
 NY, NY 10016
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 All Rights Reserved
 Made in China

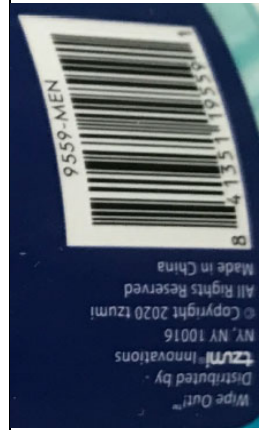


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841351195973
 Also under UPC: 00084135119597

Attachment to Retailer Statement

Wipe Out! Multi-Surface Wipes



841351195591



841351195577

Wipe Out! Multi-Surface Decontaminant Spray



840139901364



840139901379



840139901362