

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In The Matter Of:)

Pathway Investment Corp.)
150 Engle Street)
Englewood, New Jersey 07631)

Respondent.)

**STOP SALE, USE, OR
REMOVAL ORDER**
Docket No. FIFRA 02-2014-5102

I. AUTHORITY AND BACKGROUND

1. Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. Section 136k(a), authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA”) to issue an order prohibiting the sale, use, or removal of any pesticide or pesticide device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe that, *inter alia*, the pesticide or device is in violation of any provision of FIFRA, or the pesticide or device has been or is intended to be distributed or sold in violation of any provision of FIFRA.
2. The Director of the Division of Enforcement and Compliance Assistance (“DECA”), EPA Region 2, has been duly delegated the authority to issue such Stop Sale, Use, or Removal Orders.
3. Pathway Investment Corp. (“Pathway” or “the Company” or “Respondent”) is a person within the meaning of Section 2(s) of FIFRA, 7 U.S.C. Section 136(s).
4. For the purposes of this Stop Sale, Use, or Removal Order (“SSURO” or “Order”), the term Pathway Investment Corp. (“Pathway” or “the Company” or “Respondent”) herein also refers to its agents, officers and employees, as well as its affiliates, subsidiaries and divisions, including “Kinetic, a Division of Pathway.”

5. Pathway's current headquarters is located at 150 Engle Street, Englewood, New Jersey 07631. Upon information and belief, Pathway's former headquarters was located at 103 Godwin Avenue, Suite 123, Midland Park, NJ 07432.
6. Pathway's facility in Englewood, New Jersey is a pesticide "establishment," as defined by Section 2(dd) of FIFRA, 7 U.S.C. Section 136(dd), which is covered by this SSURO.
7. Section 2(u) of FIFRA, 7 U.S.C. Section 136(u), defines the term "pesticide" as, among other things, "(1) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest."
8. Title 40 C.F.R. Section 152.15 states that a pesticide is any substance intended for a pesticidal purpose (i.e., use for the purpose of preventing, destroying, repelling or mitigating any pest).
9. Title 40 C.F.R. Section 152.5 states that a pest includes any fungus, bacterium, virus or other microorganism except those on or in living man or other living animals.
10. Title 40 C.F.R. Section 152.15(a)(1), (b), and (c) states that any substance or mixture of substances is considered to be intended for a pesticidal purpose and thus to be a pesticide requiring registration if (a) the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) (1) that the substance either by itself or in combination with any other substance can or should be used as a pesticide; . . .or (b) the substance contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than use for pesticidal purpose. . .; or (c) [t]he person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.
11. Section 2(mm) of FIFRA, 7 U.S.C. Section 136(mm) defines the term "antimicrobial pesticide" as, among other things, "a pesticide that (A) is intended to- (i) disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms."
12. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A), provides it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is not registered under Section 3 of FIFRA.
13. Respondent has distributed or sold, within the meaning of "to distribute or sell" in FIFRA Section 2(gg), 7 U.S.C. Section 136(gg), the unregistered pesticides "**Kinetic Go Green Premium Food Storage Containers with Nano Silver**" (16 sizes), "**Kinetic Smartwist Series Containers**" (5 sizes) , "**TRITAN Food Storage with Nano-Silver**," and "**StackSmart Storage with Nano-Silver**" covered by this Order. (Respondent's labeling and website for these products uses the term "Nano Silver" and "Nano-Silver" with and without a dash).

II. BASIS FOR ORDER

This Order is issued based on the administrative record in this matter, including but not limited to the following:

1. Respondent's company website at <http://www.kineticcookware.com/products.php?c=13> has contained a description for the **Kinetic Smartwist Series Containers** that includes the following statements:
 - (i) Nano silver particles help reduce the growth of mold, fungus and bacteria allowing food to stay fresh up to 3 times longer
 - (ii) Kills over 650 types of bacteria
 - (iii) Permanent: Nano silver's effectiveness is not weakened as it destroys bacteria.
2. Based upon the claims on the company's website, as indicated in paragraph 1 (i) through (iii) above, Respondent had actual or constructive knowledge that its customers would use the **Kinetic Smartwist Series Containers** to destroy or mitigate a pest--- fungus, bacteria and microorganisms, and therefore said product is an "antimicrobial pesticide" as defined by Section 2 (mm)(1) of FIFRA, 7 U.S.C. Section 136A(mm)(1).
3. Based upon the claims on the company's website, as indicated in paragraph 1 (i) through (iii) above, the **Kinetic Smartwist Series Containers** are intended to destroy or mitigate a pest---fungus, bacteria and microorganisms, and therefore said product is an "antimicrobial pesticide" as defined by Section 2 (mm)(1) of FIFRA, 7 U.S.C. Section 136A(mm)(1).
4. Based upon the claims on the company's website, as indicated in paragraph 1 (i) through (iii) above, the **Kinetic Smartwist Series Containers** are pesticides that are required to be registered pursuant to the registration requirements of Section 3 of FIFRA.
5. Pursuant to Section 8 of FIFRA, EPA sent an Information Request Letter, dated December 12, 2013 (the "IRL") to Respondent requesting information on the following two products: **Kinetic Go Green Premium Food Storage Containers with Nano Silver** and **Kinetic Smartwist Series Containers products**.
6. Respondent's January 17, 2014 response to EPA's IRL states: "The Kinetic Go Green Premium Nano-Silver Food Storage line contains 16 different products. . . . The Kinetic Smartwist Series Containers product line contains 5 different products."
7. Respondent's January 17, 2014 response to EPA's IRL provided labels for the **Kinetic Go Green Premium Food Storage Containers with Nano Silver** and the **Kinetic Smartwist Series Containers**.

8. The labels of both the **Kinetic Go Green Premium Food Storage Containers with Nano Silver** and the **Kinetic Smartwist Series Containers** do not contain an EPA pesticide registration and establishment number.
9. During at least the time period from January 2012 to December 2013, Respondent distributed or sold the various products including but not limited to **Kinetic Go Green Premium Food Storage Containers with Nano Silver** and the **Kinetic Smartwist Series Containers** to various customers.
10. Respondent's January 17, 2014 response to EPA's IRL indicates that there are four types of Kinetic Green Food Storage Containers: 1) Go Green Premium Plastic Food Storage with Nano-Silver; 2) Tritan Food Storage with Nano-Silver; 3) Stacksmart Storage with Nano-Silver and 4) Smartwist Food Storage with Nano-Silver.
11. Respondent's January 17, 2014 response to EPA's IRL provided a copy of the Product Description sheet which states that each of the Kinetic Green Food Storage Containers are made with "our very popular nano silver technology" and that the "[t]echnology allows food to stay fresh for up to 3 times longer than normal containers."
12. Respondent's January 17, 2014 response to EPA's IRL states that for the past four years the company "has been providing its vendors with Benefit Sheets which highlight the benefits of the [food container storage] products that contain nano-silver, which information is again consistent with the product labels, product inserts and information contained in Kinetic's websites."
13. Respondent's Benefit Sheets indicate that Nano-Silver is in the following products: **SMARTWIST Food Storage with Nano-Silver, TRITAN Food Storage with Nano-Silver, Go Green Premium Plastic Food Storage with Nano-Silver and StackSmart Storage with Nano-Silver** and also states: "Technology helps food stay fresh up to 3 times longer."
14. Based upon Respondent's use of the term "Nano Silver" on its labeling, its website, its Product Description, and its Benefit Sheets, the Respondent had actual or constructive knowledge that its customers would use these food storage containers as pesticides.
15. Notwithstanding the Respondent's Product Description sheet, Benefit Sheets and/or vendors' company websites that explicitly state that the TRITAN Food Storage Containers and StackSmart Food Storage Containers contain Nano Silver, the Respondent's March 14, 2014 letter to EPA indicates "that there are no nanosilvers in the Tritan series or the StackSmart Storage product and the benefits sheet will be revised to indicate that these items do not contain nanosilver."
16. The label for the **Kinetic Go Green Premium Food Storage Containers with Nano Silver**, as displayed on one of the Respondent's vendor's company website states: "Nano Silver Technology" and "Nano-sized particles of silver help to reduce the growth of Bacteria and Mold allowing foods to stay fresh up to 3 TIMES LONGER"

17. Respondent's vendors' company websites contain the following pesticidal claims on the webpages that advertise the **Kinetic Go Green Premium Food Storage Containers with Nano Silver, Kinetic Smartwist Series Containers and/or TRITAN Food Storage with Nano-Silver** products:
- (i) Nano-sized silver particle allow food to stay fresh up to 3 times longer
 - (ii) Micro-particles of antimicrobial silver are infused into the polypropylene to protect the containers against mold, fungus and other microorganisms.
 - (iii) Kills over 650 types of bacteria
 - (iv) Nano silver's effectiveness is not weakened as it destroys bacteria
 - (v) Go Green Premium Nano Silver is 21st century line of air tight, water tight and Nano Silver embedded food storage containers. Silver particles are embedded into the plastic which makes the plastic resistant to the formation of mold or bacteria which significantly extends the life of the food.
 - (vi) Kinetic's Tritan containers use nano-silver technology—These microscopic silver particles are a proven method of fighting the growth of food destroying bacteria.
 - (vii) Nano Silver-Helps reduce the growth of mold, fungus and bacteria, allowing food to stay fresh up to 3 times longer.
 - (viii) The effect of Nano Silver is permanent and does not weaken over time as it destroys bacteria.
 - (ix) Nano silver technology that keeps your foods fresher up to 3 times longer than conventional plastic food storage.
18. Respondent's vendors' company websites for the **Kinetic Go Green Premium Food Storage Containers with Nano Silver and Kinetic Smartwist Series Containers** include an icon (ie., a cart or wagon) for customers to "buy now" these pesticide products.
19. Respondent's vendors' company websites offer for sale the **Kinetic Go Green Premium Food Storage Containers with Nano Silver, Kinetic Smartwist Series Containers and/or TRITAN Food Storage with Nano-Silver** pesticide products.
20. Under Sections 8 and 9 of FIFRA, 7 U.S.C. Sections 136f and 136g, EPA conducted an inspection at Pathway's facility located at 150 Engle Street, Englewood, New Jersey on November 13, 2013.
21. During the above mentioned inspection, a duly-commissioned EPA inspector tried to collect physical and/or documentary samples of the **Kinetic Go Green Premium Food Storage Containers with Nano Silver and Kinetic Smartwist Series Containers** that were offered for distribution or sale, within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).
22. During the above-mentioned inspection, the Respondent's officer did not allow EPA's inspector to obtain samples of the products requested.

23. During EPA's November 13, 2013 inspection, Respondent's officer acknowledged to EPA that Respondent sells plastic products containing nano silver, which is infused in the plastic.
24. The **Kinetic Go Green Premium Food Storage Containers with Nano Silver, Kinetic Smartwist Series Containers, TRITAN Food Storage with Nano-Silver, and StackSmart Storage with Nano-Silver** are pesticides which require registration under FIFRA because they contain a silver substance (e.g., Nano Silver) which is intended for a pesticidal purpose.
25. The presence of Nano-Silver in the plastic containers, including the lid, identified in paragraph 24, above, renders these containers pesticide products which require registration under FIFRA.
26. The **Kinetic Go Green Premium Food Storage Containers with Nano Silver, the Kinetic Smartwist Series Containers, the TRITAN Food Storage with Nano-Silver, and StackSmart Storage with Nano-Silver** are not registered with EPA under FIFRA.
27. Respondent's distribution or sale of the unregistered products **Kinetic Go Green Premium Food Storage Containers with Nano Silver, Kinetic Smartwist Series Containers, the TRITAN Food Storage with Nano-Silver, and StackSmart Storage with Nano-Silver** constitute unlawful acts under Section 12(a)(1) (A) of FIFRA.

III. ORDER

1. EPA hereby ORDERS Pathway not to sell or use any and all quantities and sizes of the pesticide products covered by this Order, which are **Kinetic Go Green Premium Food Storage Containers with Nano Silver, Kinetic Smartwist Series Containers, TRITAN Food Storage with Nano-Silver, and StackSmart Storage with Nano-Silver** ("Covered Products"). EPA also ORDERS Pathway not to remove (i.e., move from one warehouse, showroom or office to another location) any and all quantities and sizes of the pesticide products covered by this Order, unless EPA in writing approves any such removal.
2. This Order pertains to any and all quantities and sizes of the Covered Products, within the ownership, control or custody of Pathway, wherever located in the United States, including but not limited to 150 Engle Street, Englewood, New Jersey, and 49 W. 76th Street, Davenport, IA 52806.
3. Pathway shall, immediately upon receipt of this Order, comply with FIFRA and its implementing regulations, with respect to all Pathway products either containing "Nano Silver" or that are otherwise a pesticide as defined in Section 2 (u) of FIFRA, 7 U.S.C. Section 136(u) and 40 C.F.R. Section 152.15(a)(1),(b) and (c), including but not limited to the **Kinetic Go Green Premium Food Storage Containers with Nano Silver,**

Kinetic Smartwist Series Containers, TRITAN Food Storage with Nano-Silver, and StackSmart Storage with Nano-Silver.

4. Respondent shall take all appropriate steps to ensure that its vendors do not sell or distribute the Covered Products.
5. This Order shall be EFFECTIVE IMMEDIATELY upon receipt by Pathway.
6. This Order shall remain in effect until after EPA vacates the Order in writing.
7. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. Section 136j(a)(2)(I) states that it shall be unlawful for any person to violate any order issued under Section 13 of FIFRA.
8. Any person violating the terms or provisions of this Order shall be subject to civil or criminal penalties set forth in Section 14 of FIFRA, 7 U.S.C. Section 136l.
9. Respondent may seek judicial review of the Order pursuant to Section 16 of FIFRA, 7 U.S.C. Section 136n.

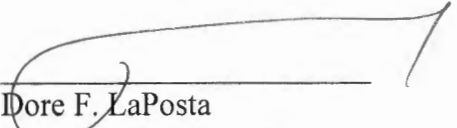
IV. EPA CONTACTS

1. For technical assistance regarding the matters addressed in this Order, please contact:

Adrian J. Enache, Ph.D., MPH
Leader, Pesticides Team
U.S. EPA, Region 2
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue – MS-500
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2. If you wish to discuss legal issues concerning this SSURO, your attorney is encouraged to contact:

Bruce H. Aber, Esq.
Assistant Regional Counsel
U.S. EPA, Region 2
Office of Regional Counsel
290 Broadway
New York, New York 10007
212-637-3224 (phone)
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Dore F. LaPosta
Director, Division of Enforcement and Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, NY 10007-1866

MARCH 19, 2014
Date

CERTIFICATE OF SERVICE

I hereby certify that an original of this Stop, Sale, Use, and Removal Order, Docket Number **FIFRA-02-2014-5102** was sent certified mail/return receipt requested and via UPS overnight mail to:

Kevin Jae Choi, President-CEO
Pathway Investment Corp
150 Engle Street
Englewood, New Jersey 07631

and carbon copies were sent by regular mail to:

Kevin Jae Choi, President-CEO
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103 Godwin Avenue, Suite 123
Midland Park, NJ 07432

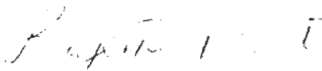
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Kelly A. Waters, Esq.
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350 Mount Kemble Avenue
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on this 25 day of July, 2014.

Signed:



Rayetta Martin