



October 11, 2007

TO: Owner/Operator of  
www.indybay.org  
via email: scimc@indymedia.org.

TO: Santa Cruz IMC  
via email: scimc@indymedia.org.

Dear Sir or Madam:

This firm represents Suterra LLC, in certain intellectual property and other legal matters.

I am writing with regard to Suterra's trade secrets and confidential information – in particular, certain ingredients to CheckMate OLR-F. Suterra has taken every possible effort to keep that business information confidential. Moreover, federal law – specifically, the Federal Insecticide Fungicide and Rodenticide Act (7 U.S.C. § 136h) – requires that information to be kept confidential.

An employee of the EPA illegally leaked our client's trade secrets and other confidential information, including the ingredients to CheckMate OLR-F, to a local newspaper, the *Santa Cruz Sentinel* (*Sentinel*). After notice was provided to the *Sentinel*, however, the *Sentinel* voluntarily agreed to remove all of this information from the public domain to the extent possible, including withdrawing it from its website.

We have only just learned that this confidential information has nonetheless been posted without our authorization on [www.indybay.org](http://www.indybay.org). Specifically, we have learned that this information remains available at <http://www.indybay.org/newsitems/2007/10/09/18453114.php> corresponding to the "Oct 9" item despite the fact that the underlying *Sentinel* article states that the EPA provided the *Sentinel* with Suterra's trade secrets regarding the ingredients of Checkmate OLF-R without authority to do so.

The unauthorized access, use, display and/or misappropriation of Suterra's trade secrets and confidential information is subject to civil remedies pursuant to California's Uniform Trade Secrets Act, which prohibits the misappropriation of trade secrets under California law. A misappropriation occurs whenever a person: (1) discloses or uses, without consent, another's trade secret that the person "[u]sed improper means to acquire knowledge of"; (2) discloses or uses, without consent, another's trade secret that the person, "[a]t the time of disclosure or use,

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knew or had reason to know that his or her knowledge of the trade secret was” “[d]erived from or through a person who had utilized improper means to acquire it,” “[a]cquired under circumstances giving rise to a duty to maintain its secrecy or limit its use,” “[d]erived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use”; or (3) discloses or uses, without consent, another’s trade secret when the person, “[b]efore a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.” Cal. Civ. Code § 3426.1. Acquisition by “improper means” includes the “breach . . . of a duty to maintain secrecy.” *Id.*

We therefore demand that you immediately and permanently cease and desist from posting, distributing, or otherwise making available Suterra’s trade secrets and confidential information, and **provide us with written confirmation regarding the same by 5:00 p.m. Pacific time tomorrow, Friday, October 12, 2007.**

Please note that any further publication, distribution, or dissemination of Suterra’s trade secrets and confidential information will subject you to further liability. This would include, but not be limited to, the creation of an additional web-site containing any of the confidential information, the distribution of the confidential information by email, such as through a list-serve, the posting of any confidential information with any other website, or the furnishing of any confidential information to any other website or otherwise.

Please be clear, Suterra’s goal is not to inhibit public discussion or debate regarding pesticides. But this letter deals very narrowly with specific trade secret information that must be kept confidential for competitive reasons. Federal law protects the confidentiality of that information precisely in order to ensure that there is a business incentive for the development of products that are both safe and effective at protecting the nation's food supply. As demonstrated by the decision of the *Sentinel* to withdraw this very information from its website, Suterra’s trade secret rights are fully protected in this area.

Suterra will pursue its civil and criminal remedies in this matter to the fullest extent possible under the law, seeking not only injunctive relief, but also damages for actual loss, royalties, and punitive damages of up to twice the award of actual loss, as well as attorneys’ fees and costs. This letter is not intended to contain a complete statement of fact with respect to the subject matter hereof, and Suterra does not waive any legal or equitable rights or remedies available to it, all of which are expressly reserved.

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I look forward to hearing from you promptly.

Sincerely,

