

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FMC CORPORATION,

Plaintiff,

v.

SHARDA USA LLC,

Defendant.

Civil Action No.: 24-cv-2419-MRP

JURY TRIAL DEMANDED

**VERIFIED AMENDED COMPLAINT FOR PATENT AND COPYRIGHT
INFRINGEMENT**

Plaintiff, FMC Corporation (“Plaintiff” or “FMC”), by its undersigned counsel, files this Amended Complaint for Patent Infringement and Copyright Infringement against Defendant Sharda USA LLC (“Defendant” or “Sharda”), and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for the infringement of U.S. Patent No. 9,107,416 and U.S. Patent No. 9,596,857 (collectively, “the Asserted Patents”) under 35 U.S.C. § 271, and for copyright infringement under 17 U.S.C. § 102 for infringement of FMC’s registered copyright in its HERO® insecticide product label, brought by FMC Corporation against Sharda USA LLC. FMC alleges that Sharda’s WINNER insecticide product infringes the Asserted Patents, and that Sharda has infringed FMC’s copyright in its HERO® product label in labeling its WINNER product.

PARTIES

2. FMC is a Delaware corporation with its corporate headquarters and principal place of business at 2929 Walnut Street, Philadelphia, Pennsylvania, 19104. Among other things, FMC

develops, manufactures, markets, and distributes herbicides, fungicides, insecticides, pesticides, and other agricultural chemicals for professional and home use. For over a century, FMC's innovative agricultural solutions have helped customers throughout the world enhance their crop yield and quantity.

3. Upon information and belief, Sharda is a Delaware corporation with its principal place of business at 34 E, Germantown PK #227, Norristown, Pennsylvania 19401. *See* Exhibit A hereto, which is printout of the webpage "About Sharda USA," <http://shardausa.com/about/>. Sharda markets and distributes herbicides, fungicides, insecticides, pesticides, and other agricultural chemicals in direct competition with FMC, but positioned as a lower-cost "generic" manufacturer and supplier of agrochemicals. Upon information and belief, Sharda manufactures, distributes, markets, imports, and sells various crop protection products, including products that infringe the Asserted Patents.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) because it arises under the United States Patent Act, 35 U.S.C. §1 *et. seq* and the Copyright Act, 17 U.S.C. § 101 *et. seq*.

5. This Court may exercise personal jurisdiction over Sharda on the basis that Sharda operates at an address in this District at 34 E, Germantown PK #227, Norristown, Pennsylvania 19401. FMC's patent and copyright infringement claims arise directly from Sharda's continuous and systematic activity in this District, including at least the importation of accused products as set forth in this Complaint as directed from its place of business in Pennsylvania. In short, this Court's exercise of jurisdiction over Sharda would be consistent with the traditional notions of fair play and substantial justice.

6. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b)(1)–(2) and §1400(b). Upon information and belief, Sharda resides in this District, has transacted business in this District, has a regular and established place of business in this District, and has committed and/or induced acts of patent infringement in this District.

PATENTS-IN-SUIT

7. On March 21, 2017, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 9,596,857, titled Insecticidal and Miticidal Mixtures of Bifenthrin and Cyano-Pyrethroids (“the ’857 Patent”). A copy of the ’857 Patent is attached as Exhibit B.

8. The ’857 Patent is valid and enforceable.

9. On August 18, 2015, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 9,107,416, titled Insecticidal and Miticidal Mixtures of Bifenthrin and Cyano-Pyrethroids (“the ’416 Patent”). A copy of the ’416 Patent is attached as Exhibit C.

10. The ’416 Patent is valid and enforceable.

11. FMC is the owner of all right, title, and interest in the ’857 Patent and the ’416 Patent (“Asserted Patents”) and has the right to sue for infringement thereof.

COPYRIGHT IN SUIT

12. On June 21, 2024, with an effective date of registration of June 20, 2024, the United States Copyright Office duly and legally issued a Copyright Registration, TX 9-402-245 (the “Asserted Copyright”), entitled “Hero Insecticide,” covering the 2021 publication version of the label for FMC’s HERO® insecticide product. A copy of the Asserted Copyright is attached as Exhibit D. The Asserted Copyright registration excludes material from the 2006 publication version of FMC’s HERO® insecticide product, which is the subject of Copyright Registration, TX 6-953-720, also entitled “Hero Insecticide.”

BACKGROUND

13. FMC's long history of innovation in agricultural sciences dates back to 1883, when John Bean invented a new insecticide spray pump. Mr. Bean developed this pump to combat an insect infestation that was ravaging orchards and endangering the livelihood of growers. He received a patent for his invention in 1884, and its success led to the formation of the Bean Spray Pump Company, which ultimately became FMC. Since Mr. Bean's original invention, FMC has continued to focus on innovation in farming and agricultural sciences, investing heavily in research and development to solve the problems facing agricultural industry.

14. FMC has earned a global reputation as an innovator and leader in the development of cutting-edge products for plant health and crop protection. Through its focus on advanced technology and customer-driven research, FMC develops innovative solutions to some of the world's most significant agricultural challenges. FMC incorporates these groundbreaking solutions into cost-effective products that enhance crop yield and quality for farmers and agricultural communities around the world.

15. FMC has received several awards for its innovative products, including the Agrow Award for Application Technology and the Agrow Award for Best New Biological Product (Biostimulant). FMC is also a four-time recipient of the Agrow Award for Best R&D Pipeline. FMC's employees and inventors work tirelessly to develop FMC's agrochemical solutions. FMC employs approximately 6,600 individuals worldwide, many of whom have received awards for their contributions to the agricultural industry. For example, FMC's inventors have received the prestigious Kenneth Spencer Award from the American Chemical Society. This award is given in recognition of meritorious contributions to the field of agricultural and food chemistry.

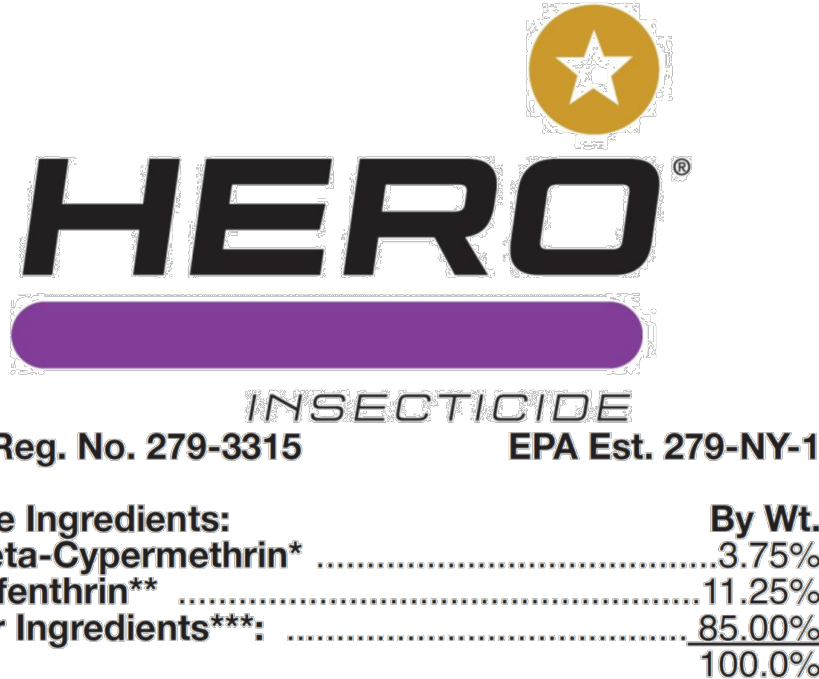
16. FMC's inventors developed a novel insecticidal and miticidal composition comprising bifenthrin and cyano-pyrethroids. FMC has received numerous patents around the world that protect compositions, methods, and processes relating to the insecticide, including the Asserted Patents.

17. FMC developed a novel combination of two highly effective pyrethroid insecticides, namely zeta-cypermethrin and bifenthrin, premixed together and sold under the trademark HERO®. The HERO® insecticide provides pest prevention and healthy, vigorous, yield-producing plants. FMC has invested millions of dollars in developing the market for HERO®, and FMC's HERO® insecticide is available throughout the United States to enhance the growth of soybeans, wheat, corn, sweet corn, beans, and potatoes. The states where a substantial number of crops are treated with HERO® insecticide include Pennsylvania, New Jersey, New York, Florida, Michigan, Ohio, Indiana, Kentucky, Illinois, Wisconsin, Iowa, Missouri, Arkansas, Nebraska, Kansas, Oklahoma, North Dakota, South Dakota, and Idaho.

18. After FMC invested substantial time and research in developing HERO®, FMC was granted patent protection, in the form of at least the Asserted Patents, in order to protect the compositions and methods relating to the HERO® product. FMC's HERO® insecticide has become a dominant product in the marketplace due to the dual action efficiency of the two insecticides, a fast knockdown of insect pests, the long residual control compared to other insecticides on the market, and protection of crops from a great many agriculturally significant insects and mites.

19. FMC's HERO® product is highly effective in part due to its premixed formula of 11.25% weight by volume of bifenthrin and 3.75% weight by volume of zeta-cypermethrin. An

excerpt of the product label for the HERO® formulation is shown below. A full copy of this product label is attached hereto as Exhibit E.



HERO Insecticide contains 0.309 pound zeta-cypermethrin and 0.927 pound bifenthrin per gallon.
 * Cis/trans isomer ratio: Max 75% (±) cis and Min. 25% (±) trans
 ** Cis isomers 97% minimum; *trans* isomers 3% maximum.
 *** Contains Petroleum Distillates.

20. HERO® is a commercial embodiment of the claims of the Asserted Patents.

21. In May 2024, FMC became aware for the first time that Sharda imported into the United States quantities of a premixed insecticide (the “Accused Product”) comprising a combination of bifenthrin and a cyano-pyrethroid in a ratio between about 10:1 to about 1:100, in the specific formulation of 11.25% weight by volume of bifenthrin and 3.75% weight by volume of zeta-cypermethrin, on information and belief to be marketed and sold in direct competition with FMC’s HERO® insecticide. A bill of lading reflecting Sharda’s importation of the Accused Product is attached hereto as Exhibit F.

22. Sharda received a conditional EPA registration in September 2023 for a 11.25% bifenthrin, 3.75% zeta-cypermethrin insecticide formula, paving the way for Sharda to eventually

import and sell its generic “me-too” knock-off of FMC’s HERO® insecticide in the United States under the brand name WINNER. A copy of Sharda’s EPA Reg. No. 83529-237 for WINNER is attached hereto as Exhibit G.

23. The Accused Product has received a conditional approval letter from the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”). Sharda’s EPA Reg. No. 83529-237 states: “This product is conditionally registered in accordance with FIFRA section 3(c)(7)(A).” *See* Exhibit G.

24. Sharda’s registered 11.25% bifenthrin, 3.75% zeta-cypermethrin insecticide product is thus admitted to be an “Identical/Substantially Similar Products (generally called “me-too” products) under FIFRA Section 3, 7 U.S.C. § 136a, whereby the EPA “may conditionally approve an application for registration or amended registration of a pesticide product under FIFRA section 3(c)(7)(A) only if the Agency determines that: (1) the pesticide and proposed use are identical or substantially similar to any currently registered pesticide and use thereof, or differ only in ways that would not significantly increase the risk of unreasonable adverse effects on the environment; and (2) approving the registration or amendment in the manner proposed by the applicant would not significantly increase the risk of any unreasonable adverse effect on the environment.” *See* <https://www.epa.gov/pesticide-registration/conditional-pesticide-registration>.

25. Sharda’s WINNER insecticide product is an exemplar of the Accused Product.

26. Upon information and belief, Sharda is and was aware of the fact that FMC’s HERO® insecticide formulation and methods of treatment are patent-protected.

27. Sharda’s WINNER product is an insecticide that contains active ingredients in the ratio of 11.25% bifenthrin to 3.75% zeta-cypermethrin, a composition identical or substantially similar to the composition of FMC’s HERO® premixed insecticide. An excerpt of the product

label for Sharda’s WINNER product is shown below. A full copy of this product label is attached hereto as Exhibit H.

BIFENTHRIN	GROUP	3A	INSECTICIDE
ZETA-CYPERMETHRIN	GROUP	3A	INSECTICIDE

Winner

ACTIVE INGREDIENTS:	WT. BY %
Bifenthrin: (2-methyl [1,1'-biphenyl]-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethyl-cyclopropanecarboxylate.....	11.25%
Zeta-Cypermethrin: (S)-cyano(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate.....	3.75%
OTHER INGREDIENTS*:	85.00%
TOTAL:	100.00%

Contains 0.927 pound bifenthrin and 0.309 pound zeta-cypermethrin per gallon.
 *Cis isomers 97% minimum; trans isomers 3% maximum.
 **Cis/trans isomer ratio: Max 75% (±) cis and Min. 25% (±) trans
 *Contains Petroleum Distillates.

28. As the images and Exhibits E and H show, the product labels for FMC’s HERO® insecticide and Sharda’s WINNER insecticide contain the exact same active ingredients in the exact same quantities of 11.25% bifenthrin + 3.75% zeta-cypermethrin

29. Sharda’s website hosts a link to the Safety Data Sheet (“SDS”) for its WINNER product, attached as Exhibit I.

30. The WINNER SDS describes the Accused Product physical state as “liquid” and its appearance as a clear liquid:

9. PHYSICAL AND CHEMICAL PROPERTIES			
<u>Information on basic physical and chemical properties</u>			
Physical state	liquid	Odor	Aromatic
Appearance	clear liquid	Odor threshold	No information available
Color	light yellow		

Exhibit I at 5. The SDS does not describe physical separation or sediment in the composition.

31. The WINNER SDS states that the Accused Product is “Stable under recommended storage conditions”:

10. STABILITY AND REACTIVITY
<p>Reactivity No data available</p>
<p>Chemical stability Stable under recommended storage conditions.</p>
<p>Possibility of Hazardous Reactions None under normal processing.</p>
<p>Conditions to avoid Elevated Temperature. Storage near to reactive materials.</p>
<p>Incompatible materials Strong oxidizing agents.</p>
<p>Hazardous Decomposition Products Thermal decomposition can lead to release of irritating and toxic gases and vapors. Carbon oxides. Hydrogen chloride. Nitrogen oxides (NOx).</p>

Exhibit I at 6.

32. In violation of FMC’s patent rights, Sharda has imported quantities of the Accused Product, specifically, at least 148 cartons (each carton comprising two 9.47-liter containers) of 11.25% bifenthrin + 3.75% zeta-cypermethrin premixed insecticide composition, into the United States.

33. Along with importing the Accused Products into the United States, Sharda has sold, offered for sale, and intends to sell or offer for sale, the Accused Products in the United States. Sharda lists WINNER insecticide on the “Insecticides” section of its website, located at <https://shardausa.com/product/winner/> (the “WINNER webpage listing”). The WINNER webpage listing features links to download the Product Label for WINNER, the WINNER Safety Data Sheet, and contains a link labeled “Find Your Local Rep.,” which directs consumers and potential consumers to sales representative contact persons by region. A printout of the WINNER webpage listing is attached hereto as Exhibit J.

34. Sharda admits that the WINNER insecticide product has been sold and offered for sale in the United States. ECF No. 27 at ¶ 25.

35. Upon information and belief, Sharda intends to offer the generic Accused Product at a significantly lower price point than FMC's patented HERO® product.

36. Absent relief from this Court, Sharda's sales and offers for sale of the Accused Products will lead to irreparable harm, including but not limited to loss of sales, loss of customers, loss of goodwill, and price erosion for FMC's patent-protected product.

37. The insecticides offered by FMC and Sharda, and covered by the Asserted Patents, are seasonal products that are primarily purchased and used by farmers during the growing season. According to FarmTrak data, over the past three years, 75% of grower purchases of HERO® insecticide have been during the months of June, July, and August, and about 89% of grower application of the HERO® insecticide takes place during the months of June, July, and August. Thus, the threatened harm to FMC is imminent.

38. In addition, before introducing its HERO® products into the market, FMC invested significant resources engaging in the rigorous process of conducting toxicity and stability testing, developing product labels, and acquiring the necessary regulatory approvals.

39. Before putting the HERO® insecticide on the market, FMC engaged in a long and arduous process of creating the product label.

40. The process of creating a product label involves creativity, time, effort, and money and reflects many years of careful product development and stewardship, which are evident in the particular words FMC chose for use on the HERO® product label.

41. In 2007, FMC registered with the EPA the first iteration of its HERO® PRODUCT label under EPA Registration No. 279-3315.

42. Since the initial registration, FMC has drafted, applied for, and successfully received approval for numerous amendments to the HERO® product labels.

43. The current iteration of the HERO® product label comprises 25 pages of small type, containing specific and detailed instructions for use, directions for storage and disposal, information about application rates, precautionary statements, and narrative texts regarding environmental, physical, and chemical hazards. *See* Exhibit E.

44. FMC spent many years conducting the field trials and other research to develop the HERO® product label containing instructions for use of the HERO® insecticide. These efforts consumed substantial financial resources..

45. On information and belief, Sharda created a product label for its WINNER product by copying protectable elements of the HERO® product label, *i.e.* language that is not language required by the EPA.

46. On information and belief, Sharda created a product label for its WINNER product, using FMC's creative expression verbatim or by wholesale copying of the protectable elements of FMC's HERO® product label.

47. For example, though rearranged, the text of both labels' instructions for use with Cotton are substantially identical:

Cotton

Pests Controlled	Rate of Application
European Corn Borer Glasshoppers Soybean (Banded) Thrips Tobacco Thrips	3.6 – 10.3 fl oz/A of product
Armyworm, Fall Armyworm, Yellowstriped Bacterial bug Boll Weevil Bollworm Cabbage Looper Cotton Aphid Cotton Fleahopper Cotton Leafperforator Cutworms Saltmarsh Caterpillar Southern Garden Leafhopper Stink Bugs Tobacco Budworm*	5.2 – 10.3 fl oz/A of product
Carmine Spider Mite Lygus Species Pink Bollworm Twospotted Spider Mite Whitefly	10.3 fl oz/A of product
<p>RESTRICTIONS</p> <p>PHI: Do not apply within 14 days of harvest.</p> <p>Maximum Amount per Application: Do not apply more than 10.3 fl oz/A of product (0.025 lb/A zeta-cypermethrin + 0.075 lb/A bifenthrin) per application.</p> <p>Maximum Amount of HERO Insecticide allowed per Year: Do not apply more than 46.35 fl oz/A of product (0.112 lb/A zeta-cypermethrin + 0.336 lb/A bifenthrin) per year.</p> <p>Do not make more than 4 applications per year when applications are made at the maximum rate.</p> <p>Refer to the maximum usage tables when applying more than one product containing either zeta-cypermethrin or bifenthrin to this crop.</p> <p>Do not graze livestock in treated areas or cut treated crops for feed.</p> <p>REMARKS</p> <p>HERO Insecticide may be applied in water or refined vegetable oil (soybean/cottonseed).</p> <p>Application in Water: Apply in a minimum of 5 gallons of finished spray per acre with ground equipment or 1 gallon of finished spray per acre by aircraft. When applying by air, 1 quart of emulsified oil may be substituted for one quart of water in the finished spray.</p> <p>ULV Application: Apply the labeled rate of HERO Insecticide in refined vegetable oil in a minimum of 1 quart of finished spray per acre with aircraft calibrated to give adequate coverage.</p> <p>To Control Boll Weevil: Apply HERO Insecticide at an interval of 3 to 4 days until pest numbers are reduced to acceptable levels. Do not exceed maximum labeled rate.</p> <p>To Control Mites and Aphids: Apply when pests first appear. Repeat as necessary to maintain control. Do not exceed maximum labeled rate.</p> <p>*Coverage is essential for control of this pest. For heavy outbreaks, tank mix with another product that is labeled for this pest.</p>	

Ex. E (HERO® Label) at 7.

Cotton

Pests Controlled	Rate of Application	Method of Application
European Corn Borer Grasshoppers Soybean (Banded) Thrips Tobacco Thrips	3.6 - 10.3 fl. oz./A of product	Winner may be applied in water or refined vegetable oil (soybean/cottonseed). Application in Water: Apply in a minimum of 5 gals. of finished spray per acre with ground equipment or 1 gal. of finished spray per acre by aircraft. When applying by air, 1 qt. of emulsified oil may be substituted for 1 qt. of water in the finished spray. ULV Application: Apply the labeled rate of Winner in refined vegetable oil in a minimum of 1 qt. of finished spray per acre with aircraft calibrated to give adequate coverage. To Control Boll Weevil: Apply Winner at an interval of 3 - 4 days until pest numbers are reduced to acceptable levels. To Control Mites and Aphids: Apply when pests first appear. Repeat as necessary to maintain control. DO NOT exceed maximum labeled rate.
Armyworm, Fall* Armyworm, Yellowstriped Bagrada Bug Boll Weevil Bollworm Cabbage Looper Cotton Aphid Cotton Fleahopper Cotton Leafperforator Cutworms Saltmarsh Caterpillar Southern Garden Leafhopper Stink Bugs Tobacco Budworm*	5.2 - 10.3 fl. oz./A of product	Restrictions: <ul style="list-style-type: none"> • Pre-Harvest Interval (PHI): DO NOT apply within 14 days of harvest. • Maximum Amount per Application: DO NOT apply more than 10.3 fl. oz./A of product (0.025 lb./A zeta-cypermethrin + 0.075 lb./A bifenthrin) per application. • Maximum Amount of Winner allowed per Year: DO NOT apply more than 46.35 fl. oz./A of product (0.112 lb./A zeta-cypermethrin + 0.336 lb./A bifenthrin) per year. • DO NOT make more than 4 applications per year when applications are made at the maximum rate. • DO NOT graze livestock in treated areas or cut treated crops for feed. • Refer to the maximum usage tables when applying more than one product containing either zeta-cypermethrin or bifenthrin to this crop.
Carmine Spider Mite Lygus spp. Pink Bollworm Twospotted Spider Mite Whitefly	10.3 fl. oz./A of product	*Coverage is essential for control of this pest. For heavy outbreaks, tank mix with another product that is labeled for this pest.

Ex. H (WINNER Label) at 9. Additional comparisons of the language that Sharda copied from FMC's HERO Label is detailed on Exhibit K.

COUNT I:***Sharda's Infringement of the '857 Patent under 35 U.S.C. § 271***

48. FMC incorporates Paragraphs 1–47 by reference as if fully incorporated here.
49. Upon information and belief, Sharda has infringed and continues to infringe within the meaning of 35 U.S.C. § 271 by, without FMC's authority, importing, making, using, selling, and/or offering to sell in the United States products covered by the '857 Patent.
50. According to Sharda's own advertisements, product label, and conditional EPA registration, Sharda has directly and indirectly infringed at least claim 1, 2, 3, and 6 of the '857 Patent in violation of 35 U.S.C. § 271 by importing, using, offering for sale, and/or selling an insecticidal composition comprising bifenthrin and cyano-pyrethroids made and used in accordance with FMC's patented composition and method, without authorization from FMC, and inducing consumers to practice the patented method of pest control.

51. According to Sharda's product label, the Accused Product comprises the following formula.

	WT. BY %
ACTIVE INGREDIENTS:	
Bifenthrin: (2-methyl [1,1'-biphenyl]-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethyl-cyclopropanecarboxylate.....	11.25%
Zeta-Cypermethrin: (S)-cyano(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate.....	3.75%
OTHER INGREDIENTS*:	85.00%
TOTAL:	100.00%

Contains 0.927 pound bifenthrin and 0.309 pound zeta-cypermethrin per gallon.
 *Cis isomers 97% minimum; trans isomers 3% maximum.
 **Cis/trans isomer ratio: Max 75% (±) cis and Min. 25% (±) trans
 *Contains Petroleum Distillates.

52. Claim 1 of the '857 Patent claims as follows:

1. An insecticidal composition comprising *bifenthrin* and a cyano-pyrethroid selected from the group consisting of acrinathrin, cycloprothrin, deltamethrin, tralomethrin, fenvalerate, cyfluthrin, beta-cyfluthrin, flucythrinate, alpha-cypermethrin, beta-cypermethrin, theta-cypermethrin, *zeta-cypermethrin*, cyphenothrin, cyhalothrin, lambda-cyhalothrin, esfenvalerate, fluvalinate and fenpropathrin, wherein the composition has *a ratio of bifenthrin:cyano-pyrethroid of from about 10:1 to about 1:100*. [Emphasis added.]

53. Claim 1 of the '857 Patent requires a stable insecticidal composition comprising bifenthrin and a cyano-pyrethroid.

54. Sharda's WINNER product was conditionally registered in accordance with FIFRA section 3(c)(7)(A), (*see* 7 U.S.C. § 136a), and is therefore identical or substantially similar to FMC's patented HERO® product, which is a stable insecticidal composition comprising bifenthrin and a cyano-pyrethroid.

55. In Claim 1 of the '857 Patent, zeta-cypermethrin is within the group of selected cyano-pyrethroids.

56. Sharda's WINNER product label lists bifenthrin and zeta-cypermethrin as active ingredients.

57. Claim 1 of the '857 Patent requires a composition ratio of bifenthrin:cyano-pyrethroid of from about 10:1 to about 1:100. Sharda's WINNER product contains 11.25% bifenthrin and 3.75% zeta-cypermethrin. This correlates to a ratio of 3:1 bifenthrin:cyano-pyrethroid, which falls within the range covered by Claim 1.

58. On information and belief, Sharda's WINNER product is a stable composition. *See* Exhibit I at 5, 6.

59. Based on the foregoing, Sharda's WINNER product includes all of the limitations of Claim 1 of the '857 Patent.

60. Claim 2 of the '857 Patent claims as follows:

2. The insecticidal composition of claim 1 further comprising in admixture at least ***one agriculturally acceptable extender or adjuvant***. [Emphasis added.]

61. The label for the Accused Product contains "other ingredients," including petroleum distillates.

62. Petroleum distillates are adjuvants.

63. Based on the foregoing, Sharda's WINNER product includes all of the limitations of Claim 2 of the '857 Patent.

64. Claim 3 of the '857 Patent claims as follows:

3. The insecticidal composition of claim 2 wherein the cyano-pyrethroid is at least one selected from the group consisting of: deltamethrin; cyfluthrin; alpha-cypermethrin; ***zeta-cypermethrin***; lambda-cyhalothrin; and esfenvalerate. [Emphasis added.]

65. Claim 3 requires a cyano-pyrethroid, where zeta-cypermethrin is listed in this group of cyano-pyrethroids. The label for Sharda's WINNER product states that it contains zeta-cypermethrin as an active ingredient.

66. Based on the foregoing, Sharda's WINNER product includes all of the limitations of Claim 3 of the '857 Patent.

67. Claim 6 of the '857 Patent claims as follows:

6. A method for controlling *unwanted insects* comprising the step of applying a composition of claim 1 to a locus where insects are present or are expected to be present. [Emphasis added.]

68. The label for Sharda's WINNER product directs others to "[u]se this product only in accordance with its labeling..." Exhibit H at 3. To control unwanted insects, Sharda directs users of its WINNER product to "[b]ase timing and frequency of applications on insect populations reaching locally determined economic threshold levels." *Id.* at 8. Sharda's product label similarly instructs third parties, "To Control Boll Weevil: Apply Sharda Bifen. 11.25% + Zeta-Cyper. 3.75% EC at an interval of 3–4 days until pest numbers are reduced to acceptable levels." *Id.* at 9.

69. Based on at least the foregoing, Sharda induces others to infringe Claim 6 of the '857 Patent.

70. Upon information and belief, Sharda's infringing acts will continue unless restrained by this Court.

71. A claim chart comparing the asserted claims of the '857 Patent to the Accused Product is attached hereto as Exhibit L.

72. The Accused Product, Sharda's WINNER product, and any other Sharda compositions comprising a combination of bifenthrin and cyano-pyrethroid in any ratio from about 10:1 to about 1:100, directly infringe at least one claim of the '857 Patent, pursuant to 35 U.S.C. § 271(a).

73. By importing, selling, and offering for sale the Accused Product in the United States to consumers and end users, Sharda specifically intends and directs that others use the Accused

Product in an infringing manner, thereby inducing infringement of the '857 Patent pursuant to 35 U.S.C. § 271(b).

74. FMC has been and will continue to be irreparably harmed by Sharda's infringement of the '857 Patent.

75. Sharda's infringement of the '857 Patent has caused and is continuing to cause FMC to suffer irreparable harm, which harm is not fully compensable by monetary damages, and FMC is entitled to injunctive relief to prevent further infliction of such harm.

76. FMC has suffered monetary damages as a result of the direct and indirect infringing activities of Sharda and will continue to suffer damages as long as those infringing activities continue.

77. FMC is entitled to recover damages adequate to compensate FMC for Sharda's infringement of the '857 Patent.

78. By virtue of at least the filing of FMC's Complaint (ECF No. 1), Sharda had actual notice of the '857 Patent and the grounds for infringement, such that any further infringing acts have been willful.

COUNT II:

Sharda's Infringement of the '416 Patent under 35 U.S.C. § 271

79. FMC incorporates Paragraphs 1–78 by reference as if fully incorporated here.

80. Upon information and belief, Sharda has infringed and continues to infringe within the meaning of 35 U.S.C. § 271 by, without FMC's authority, importing, making, using, selling, and/or offering to sell in the United States products covered by the '416 Patent.

81. According to Sharda's own advertisements, product label, and conditional EPA registration, Sharda has infringed at least claims 1, 2, 4–14, and 16 of the '416 Patent in violation of 35 U.S.C. § 271 by manufacturing, importing, using, offering for sale, and/or selling an

insecticidal composition made and used in accordance with FMC’s patented composition and method, without authorization from FMC, and inducing consumers to practice the patented method of pest control.

82. According to Sharda’s product label, the WINNER product comprises the following formula:

ACTIVE INGREDIENTS:	WT. BY %
Bifenthrin: (2-methyl [1,1'-biphenyl]-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethyl-cyclopropanecarboxylate.	11.25%
Zeta-Cypermethrin: (S)-cyano(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate.	3.75%
OTHER INGREDIENTS*:.	85.00%
TOTAL:	100.00%

Contains 0.927 pound bifenthrin and 0.309 pound zeta-cypermethrin per gallon.
 *Cis isomers 97% minimum; trans isomers 3% maximum.
 **Cis/trans isomer ratio: Max 75% (±) cis and Min. 25% (±) trans
 *Contains Petroleum Distillates.

83. Claim 1 of the '416 Patent claims as follows:

1. A *miticidal* composition comprising *bifenthrin* and a cyano-pyrethroid selected from the group consisting of deltamethrin, cyfluthrin, alpha-cypermethrin, *zeta-cypermethrin*, lambda-cyhalothrin, and esfenvalerate, wherein *the weight ratio of bifenthrin to cyano-pyrethroid is from 10:1 to 1:30*. [Emphasis added.]

84. Claim 1 of the '416 Patent requires a stable miticidal composition.

85. On information and belief, Sharda’s WINNER product is a stable miticidal composition. See Exhibit I at 5, 6.

86. Sharda’s WINNER product was conditionally registered in accordance with FIFRA section 3(c)(7)(A), (see 7 U.S.C. § 136a), and is therefore identical or substantially similar to FMC’s patented HERO® product, which is a stable miticidal composition comprising bifenthrin and a cyano-pyrethroid.

87. The Sharda WINNER product label states that the WINNER product can be used to control mites. *See* Exhibit H at 9.

88. Claim 1 of the '416 Patent requires a composition comprising bifenthrin and a cyano-pyrethroid.

89. In Claim 1 of the '416 Patent, zeta-cypermethrin is within the group of selected cyano-pyrethroids.

90. The Sharda WINNER product label lists bifenthrin and zeta-cypermethrin as active ingredients.

91. Claim 1 of the '416 Patent requires a composition ratio of bifenthrin:cyano-pyrethroid of from about 10:1 to about 1:30. The Sharda WINNER product contains 11.25% bifenthrin and 3.75% zeta-cypermethrin. This correlates to a ratio of 3:1 of bifenthrin:cyano-pyrethroid, which falls within the range covered by Claim 1.

92. Based on the foregoing, the Sharda WINNER product includes all of the limitations of Claim 1 of the '416 Patent.

93. Claim 2 of the '416 Patent claims as follows:

2. The composition of claim 1 wherein the cyano-pyrethroid is ***zeta-cypermethrin***. [Emphasis added.]

94. Claim 2 requires a cyano-pyrethroid, where zeta-cypermethrin is listed in this group of cyano-pyrethroids.

95. The product label for Sharda's WINNER product lists zeta-cypermethrin as an active ingredient.

96. Based on the foregoing, the Sharda WINNER product includes all of the limitations of Claim 2 of the '416 Patent.

97. Claim 4 of the '416 Patent claims as follows:

4. The composition of claim 1 further comprising *an agriculturally acceptable extender or adjuvant*. [Emphasis added.]

98. The product label for Sharda's WINNER product states that it contains "other ingredients," including petroleum distillates.

99. Petroleum distillates are adjuvants.

100. Based on the foregoing, the Sharda WINNER product includes all of the limitations of Claim 4 of the '416 Patent.

101. Claim 5 of the '416 Patent claims as follows:

5. A method for controlling unwanted insects or mites comprising applying a composition comprising bifenthrin and a cyano-pyrethroid selected from the group consisting of deltamethrin, cyfluthrin, alpha-cypermethrin, zeta-cypermethrin, lambda-cyhalothrin, and esfenvalerate, wherein the weight ratio of bifenthrin to cyano-pyrethroid is from 10:1 to 1:30 to the foliar portion of a plant. [Emphasis added.]

102. Claim 5 of the '416 Patent directs others to apply a composition comprising bifenthrin and a cyano-pyrethroid. Zeta-cypermethrin is within the group of selected cyano-pyrethroids. The product label for Sharda's WINNER product lists bifenthrin and zeta-cypermethrin as active ingredients.

103. Claim 5 of the '416 Patent requires that the composition to be applied has a weight ratio of bifenthrin to cyano-pyrethroid from about 10:1 to about 1:30. The product label for Sharda's WINNER product states that it contains 11.25% bifenthrin and 3.75% zeta-cypermethrin. This correlates to a ratio of 3:1 of bifenthrin:cyano-pyrethroid, which falls within the range covered by Claim 5.

104. Claim 5 of the '416 Patent requires applying the composition to the foliar portion of a plant. The product label for Sharda's WINNER product includes a method of application

section that directs applying the composition to the foliar portion of a plant. Exhibit H at 11, 12, and 14.

105. Based on the foregoing, Sharda induces others to infringe Claim 5 of the '416 Patent.

106. Claim 6 of the '416 Patent claims as follows:

6. The composition of claim 1 wherein *the weight ratio of bifenthrin to cyano-pyrethroid is from 4:1 and 1:4*. [Emphasis added.]

107. Claim 6 of the '416 Patent requires a weight ratio of bifenthrin to cyano-pyrethroid is from 4:1 and 1:4.

108. The product label for Sharda's WINNER product states that it contains 11.25% bifenthrin and 3.75% zeta-cypermethrin. This correlates to a ratio of 3:1 of bifenthrin:cyano-pyrethroid, which falls within the range covered by Claim 6.

109. Based on the foregoing, the Sharda WINNER product includes all of the limitations of Claim 6 of the '416 Patent.

110. Claim 7 of the '416 Patent claims as follows:

7. The composition of claim 6 wherein the weight ratio of bifenthrin to cyano-pyrethroid is **from 3:1 and 1:3**. [Emphasis added.]

111. Claims 7 of the '416 Patent requires a weight ratio of bifenthrin to cyano-pyrethroid from 3:1 and 1:3.

112. The product label for Sharda's WINNER product states that it contains 11.25% bifenthrin and 3.75% zeta-cypermethrin. This correlates to a ratio of 3:1 of bifenthrin:cyano-pyrethroid, which falls within the range covered by Claim 7.

113. Based on the foregoing, the Sharda WINNER product includes all of the limitations of Claim 7 of the '416 Patent.

114. Claim 8 of the '416 Patent claims as follows:

8. The composition of claim 6 wherein the *cyano-pyrethroid is zeta-cypermethrin*. [Emphasis added.]

115. The product label for the Sharda WINNER product lists zeta-cypermethrin as an active ingredient.

116. Based on the foregoing, the Sharda WINNER product includes all of the limitations of Claim 8 of the '416 Patent.

117. Claim 9 of the '416 Patent claims as follows:

9. The method of claim 5 wherein the weight ratio of bifenthrin to cyano-pyrethroid is *from 4:1 and 1:4*. [Emphasis added.]

118. Claim 9 of the '416 Patent requires a weight ratio of bifenthrin to cyano-pyrethroid from 4:1 and 1:4. The product label for the Sharda WINNER product states that it contains 11.25% bifenthrin and 3.75% zeta-cypermethrin. This correlates to a ratio of 3:1 of bifenthrin:cyano-pyrethroid, which falls within the range covered by Claim 9.

119. Based on at least the foregoing, Sharda induces others to infringe claim 9 of the '416 Patent.

120. Claim 10 of the '416 Patent claims as follows:

10. The method of claim 9 wherein the cyano-pyrethroid is *zeta-cypermethrin*. [Emphasis added.]

121. Claim 10 requires a method from Claim 9 where the cyano-pyrethroid is zeta-cypermethrin. The product label for Sharda's WINNER product lists zeta-cypermethrin as an active ingredient.

122. Based on at least the foregoing, Sharda induces others to infringe claim 10 of the '416 Patent.

123. Claim 11 of the '416 Patent claims as follows:

11. *A foliar insecticidal or miticidal composition* comprising *bifenthrin and a cyano-pyrethroid* selected from the group consisting of deltamethrin, cyfluthrin, alpha-cypermethrin, *zeta-cypermethrin*, lambda-cyhalothrin, and esfenvalerate, wherein the weight ratio of bifenthrin to cyano-pyrethroid is *from 10:1 to 1:30*. [Emphasis added.]

124. Claim 11 of the '416 Patent requires a composition comprising bifenthrin and a cyano-pyrethroid. Zeta-cypermethrin is within the group of selected cyano-pyrethroids. The product label for the Sharda WINNER product lists bifenthrin and zeta-cypermethrin as active ingredients.

125. Claim 11 of the '416 Patent requires a weight ratio of bifenthrin to cyano-pyrethroid of from about 10:1 to about 1:30. The product label for the Sharda WINNER product states that it contains 11.25% bifenthrin and 3.75% zeta-cypermethrin. This correlates to a ratio of 3:1 of bifenthrin:cyano-pyrethroid, which falls within the range covered by Claim 11.

126. Based on the foregoing, the Sharda WINNER product includes all of the limitations of Claim 11 of the '416 Patent.

127. Claim 12 of the '416 Patent claims as follows:

12. The composition of claim 11 wherein the weight ratio of bifenthrin to cyano-pyrethroid is from *4:1 and 1:4*.

128. Claim 12 of the '416 Patent requires a weight ratio of bifenthrin to cyano-pyrethroid from 4:1 and 1:4. The product label for the Sharda WINNER product states that it contains 11.25% bifenthrin and 3.75% zeta-cypermethrin. This correlates to a ratio of 3:1 of bifenthrin:cyano-pyrethroid, which falls within the range covered by Claim 12.

129. Based on the foregoing, the Sharda WINNER product includes all of the limitations of Claim 12 of the '416 Patent.

130. Claim 13 of the '416 Patent claims as follows:

13. The composition of claim 12 wherein the weight ratio of bifenthrin to cyano-pyrethroid is from **3:1 and 1:3**.

131. Claim 13 of the '416 Patent requires a weight ratio of bifenthrin to cyano-pyrethroid from 3:1 and 1:3. The product label for the Sharda WINNER product states that it contains 11.25% bifenthrin and 3.75% zeta-cypermethrin. This correlates to a ratio of 3:1 of bifenthrin:cyano-pyrethroid, which falls within the range covered by Claim 13.

132. Based on the foregoing, the Sharda WINNER product includes all of the limitations of Claim 13 of the '416 Patent.

133. Claim 14 of the '416 Patent claims as follows:

14. The composition of claim 11 wherein the cyano-pyrethroid is ***zeta-cypermethrin***.

134. Claim 14 requires a method from Claim 11 where the cyano-pyrethroid is zeta-cypermethrin. The product label for Sharda's WINNER product lists zeta-cypermethrin as an active ingredient.

135. Based on the foregoing, the Sharda WINNER product includes all of the limitations of Claim 14 of the '416 Patent.

136. Claim 16 of the '416 Patent claims as follows:

16. The composition of claim 11 further comprising ***an agriculturally acceptable extender or adjuvant***. [Emphasis added.]

137. The product label for Sharda's WINNER product states that it contains "other ingredients," including petroleum distillates.

138. Petroleum distillates are adjuvants.

139. Based on the foregoing, the Sharda WINNER product includes all of the limitations of Claim 16 of the '416 Patent.

140. A claim chart comparing the asserted claims of the '416 Patent to the Accused Product is attached hereto as Exhibit L.

141. The Accused Product, and any other Sharda compositions comprising a combination of bifenthrin and cyano-pyrethroid in any ratio from about 10:1 to about 1:100, directly infringe at least one claim of the '416 Patent, pursuant to 35 U.S.C. § 271(a).

142. By importing and selling the Accused Product in the United States to consumers and end users, Sharda specifically intends and directs that others use the Accused Product in an infringing manner, thereby inducing infringement of the '416 Patent pursuant to 35 U.S.C. § 271(b).

143. FMC has been and will continue to be irreparably harmed by Sharda's infringement of the '416 Patent unless and until such infringement is enjoined by this Court.

144. Sharda's infringement of the '416 Patent has caused and is continuing to cause FMC to suffer irreparable harm, which harm is not fully compensable by monetary damages, and FMC is entitled to injunctive relief to prevent further infliction of such harm.

145. FMC has suffered monetary damages as a result of the direct and indirect infringing activities of Sharda and will continue to suffer damages as long as Sharda's infringing activities continue.

146. FMC is entitled to recover damages adequate to compensate FMC for Sharda's infringement of the '416 Patent.

147. By virtue of at least the filing of FMC's Complaint (ECF No. 1), Sharda had actual notice of the '416 Patent and the grounds for infringement, such that any further infringing acts have been willful.

COUNT III:

Sharda's Infringement of FMC's Copyright in the HERO® Pesticide Label

148. FMC incorporates by reference Paragraphs 1–147 as if fully incorporated here.

149. FMC holds a valid copyright in its HERO® Label. FMC registered the current version of this label with the U. S. Copyright Office on June 20, 2024. *See* Exhibit D.

150. Sharda's WINNER label is substantially similar to FMC's HERO® pesticide label.

151. As evidenced by a comparison of the HERO Label and the WINNER Label, Sharda copied FMC's HERO® label virtually verbatim, using substantial portions of FMC's copyrighted work in its WINNER label. *See* Exhibit K.

152. Sharda has distributed this copied label on its WINNER products and on its website, and continues to distribute it.

153. On information and belief, Sharda has distributed, and continues to distribute, this copied label with its WINNER products.

154. Sharda's continued use of the WINNER product label constitutes ongoing infringement of FMC's Asserted Copyright under 17 U.S.C. § 501.

155. Sharda's ongoing infringement of FMC's Asserted Copyright is willful and knowing.

156. FMC has been, and continues to be, damaged by Sharda's infringement of FMC's Asserted Copyright.

157. FMC has suffered irreparable injury for which there is no adequate remedy at law and will continue to suffer such irreparable injury unless Sharda's infringement of FMC's Asserted Copyright is enjoined by this Court.

REQUEST FOR RELIEF

WHEREFORE, FMC respectfully requests the following relief:

1. A judgment that Defendant Sharda has directly infringed one or more claims of the Asserted Patents, and/or that Defendant Sharda has indirectly infringed one or more claims of the Asserted Patents by way of inducing and/or contributing to direct infringement by its customers;
2. Entry of a preliminary and a permanent injunction restraining and enjoining Defendant Sharda, its officers, agents, employees, and those persons in privity with them and those acting in active concert or participation with Defendant Sharda, from any further direct or indirect infringement of the Asserted Patents for the full terms thereof, including any extensions, pursuant to 35 U.S.C. § 283;
3. A judgment that Defendant Sharda has infringed FMC's copyright in the Asserted Copyright, registered with the U.S. Copyright Office under TX 9-402-245;
4. Entry of a permanent injunction restraining and enjoining Defendant Sharda, its officers, agents, employees, and those persons in privity with them and those acting in active concert or participation with Defendant Sharda, from any further direct or indirect infringement of the Asserted Copyright, pursuant to 17 U.S.C § 502;
5. An Order instructing Defendant to destroy:
 - i. Any and all remaining Accused Products;
 - ii. Any and all products created or derived from the Accused Products; and
 - iii. Any and all scientific or regulatory data and analysis generated as a result of Defendant Sharda's use of Accused Products or any product created or derived from the Accused Products; and
 - iv. Any and all WINNER labels which infringe the Asserted Copyright;

6. An Order instructing Defendant Sharda to file with this Court and serve upon FMC a report in writing and under oath setting forth in detail the manner and form in which Defendant Sharda has complied with any permanent injunction or Order resulting from this case within thirty (30) days after entry of such permanent injunction or Order;

7. A judgment that FMC be awarded all appropriate damages under 35 U.S.C. § 284 for Defendant Sharda's past infringement and any continuing or future infringement of the Asserted Patents, up until the date such judgment is entered, including pre- and post-judgment interest, costs, and disbursements pursuant to 35 U.S.C. § 284;

8. A judgment that FMC be awarded all appropriate damages under 17 U.S.C. § 504;

9. A finding that Defendant Sharda's infringing acts after receiving notice of FMC's Complaint (ECF No. 1) and the exhibits thereto are willful, and an accompanying award of treble damages pursuant to 35 U.S.C. § 284;

10. A finding that this action is an exceptional case under 35 U.S.C. § 285 such that FMC be awarded costs and expenses, including reasonable attorneys' fees, that FMC incurs in prosecuting this action;

11. An award of FMC's costs, expenses, disbursements and reasonable attorneys' fees relating to Sharda's copyright infringement under 17 U.S.C. § 505; and

12. A judgment or award of such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

FMC demands a jury trial on all claims and issues so triable.

Dated: July 26, 2024

Respectfully submitted,

ICE MILLER LLP

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Attorneys for Plaintiff
FMC Corporation


VERIFICATION

I, Neil Young, Ph.D., pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Portfolio Manager for Insecticides and Biologicals at Plaintiff FMC Corporation, and I am authorized to make this verification on behalf of Plaintiff FMC Corporation.
2. I have read the First Amended Complaint, am familiar with its contents, and, based on a reasonable inquiry conducted with the assistance of counsel and other employees of FMC Corporation, the Complaint, the exhibits thereto, and the statements contained therein are accurate, have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, and are not being made for any improper purpose.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed at Philadelphia, PA, on July 26, 2024.



Neil Young