

IN THE COURT, FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.:
DIVISION:

SUSAN SHELLY,

Plaintiff,

vs.

TARGET CORPORATION,

Defendant.

_____ /

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff, SUSAN SHELLY, by and through the undersigned counsel, bring suit against Defendant, TARGET CORPORATION ("TARGET"), and alleges:

PARTIES, JURISDICTION, & VENUE

1. This is an action for injunctive relief and declaratory relief, actual damages of no more than \$5,000, exclusive of interest, costs, and for attorney's fees and costs.

2. Plaintiff, SUSAN SHELLY is a natural person and resident of Palm Beach County, Florida, and has standing to bring this action by virtue of being the subject of Defendant's violations of law as better described herein, which occurred in West Palm Beach, Florida.

3. Defendant, TARGET, is a chain of American stores offering high-quality, on

trend merchandise headquartered in Minneapolis, Minnesota, which at all times material hereto was conducting business in Florida, maintained agents for the customary transaction of business in Florida, and conducted substantial and not isolated business activity within this State.

4. Based on the foregoing, venue is proper in the above-captioned Court, and this Court has jurisdiction over the causes of action alleged herein as a superior court processing plenary and general jurisdiction.

FACTS

5. On or about August 12, 2019 Plaintiff, AIMEE WATER purchased the Product (roundup) from a TARGET located at 1200 Linton Blvd. Delray Beach, Florida 33444.

6. The Product has not been altered between manufacture and points of sale. A photograph of the Product's principal display panel ("PDP") is attached hereto as "EXHIBIT A."

7. The PDP states, "Keep Out of Reach of Children" and Caution," acknowledging the danger of the Product and such use. ¹

8. Defendant, TARGET, acknowledges the Product is health hazardous on the Material Safety Data Sheet (hereinafter "MSDS"):

Inhalation and skin contact are expected to be the primary routes of occupational exposure to glyphosate. Occupational exposure to this material has not been reported to cause significant adverse health effects. However, swallowing of a similar, but more concentrated formulation, has been reported to produce gastrointestinal discomfort, nausea, vomiting and diarrhea.

¹ Material Safety Data Sheet, Roundup Weed & Grass Killer I Ready-To-Use, #7070, EPA REG. NO.: 71995-23 PN: 7037 (October 31, 2000).

9. Defendant acknowledges inhalation of glyphosate “are expected to be the primary of occupational exposure.”²

10. Defendant fails to warn the consumer the Product contains health hazardous and dangerous chemicals by lacking proper use instructions.³

11. Defendant, TARGET, does not place the proper warning labels on the Product that consumers should use precautions as the Product contains unsafe and hazardous chemicals.

12. In reliance on the Product label and advertising Plaintiff believed she was purchasing a safe product despite the product containing unsafe ingredients without proper label warning and paid a premium for such Product.

13. Defendant, TARGET, represents the Product as safe by failing to place proper warning labels on the Product.

14. Defendant, TARGET, was aware of the present and substantial danger to consumers while using or misusing the Product in an intended and reasonably foreseeable way and did not disclose the potential risks to consumers.

15. Defendant, TARGET, markets, advertises, and sells the Product as being safe and does not include the proper warning label on the Product.

16. Defendant, TARGET, knew the potential risks which resulted from the use of the Product and did not include the proper warning label.

² MSDS, *supra* note 1, at 1.

³ Chemical Cartridge/Gas Mask Respirator: Gas masks are also known as "air-purifying respirators" because they filter or clean chemical gases out of the air as you breathe. This respirator includes a facepiece or mask, and a cartridge or canister. Straps secure the facepiece to the head. The cartridge may also have a filter to remove particles. Gas masks are effective only if used with the correct cartridge or filter (these terms are often used interchangeably) for a particular biological or chemical substance. Selecting the proper filter can be a complicated process. There are cartridges available that protect against more than one hazard, but there is no "all-in-one" cartridge that protects against all substances. It is important to know what hazards you will face in order to be certain you are choosing the right filters/cartridges. U.S. Dep't of Labor, OSHA Bulletin, General Respiratory Protection Guidance for Employees and Workers.

17. Defendant, TARGET, fails to warn the consumer the Product contains unsafe and health hazardous ingredients.

18. Defendant, TARGET, labels fail to include the proper warning and instruct consumers to wear protective safety features while using or misusing the Product in a reasonably foreseeable manner.

19. Had Plaintiff had known the carcinogenic properties of Roundup and its link to cancer, he would not have purchased it.

20. Had Defendant, TARGET, placed proper warning labels, such as Exhibit B, plaintiff would have not purchased the Product.

21. Accordingly, Plaintiff and all other consumers purchasing the Product at retail stores throughout Florida have been, are, and will continue to be aggrieved by a deceptively labeled and marketed product and by being deprived of the benefit of the bargain they reasonably anticipated from the Product labeling and lack of proper warning label.

22. Defendant, TARGET, unlawfully markets, advertises, sells, and distributes the Product to Florida purchasers in retail locations.

23. Defendant, TARGET, sells the Product at a premium price, above other similar products in the marketplace that contain safe ingredients.

24. Defendant's false and misleading representations and omissions deceive Florida consumers.

25. Plaintiff has performed all conditions precedent to bringing this Action.

GLYPHOSATE CLASSIFICATION

26. Defendant's Product is in fact not safe as it contains the chemical Glyphosate,

which is known as probable carcinogen.⁴

27. Glyphosate⁵ has currently the highest global production of all herbicides.

28. Glyphosate has been classified as Group 2A by the International Agency for Research on Cancer (IARC) means that the agent is **probably carcinogenic to humans**.

29. The IARC also found that glyphosate caused DNA and chromosomal damage in human cells.

30. The Product contains the ingredient, Glyphosate, isopropylamine salt 2.0% as a active ingredient within the Product.⁶

MONSANTO LOSES THREE VERDICTS AFTER ROUNDUP IS FOUND TO CAUSE CANCER IN HUMANS

31. On August 10, 2018, a unanimous California jury in Johnson v. Monsanto Co., No. CGC16550128 (Cal. Super. Ct., Cnty. of S.F.) held Roundup and Ranger Pro herbicides were unsafe and were a substantial factor in causing harm to the plaintiff. The jury also found MONSANTO COMPANY failed to adequately warn customers of the risks associated with its Roundup and stronger Ranger Pro products, and that the company acted with malice or oppression.

32. On March 27, 2019, a unanimous California jury in Hardemon v. Monsanto Co., No. 3:16-mc-80232 (N.D. Cal.) found Monsanto Company liable for failing to warn Roundup could cause cancer, liable for negligence, and liable in a design defect claim.⁷

⁴ Internat'l Agency for Research on Cancer, WHO, IARC Monographs Volume 112: *evaluation of five organophosphate insecticides and herbicides*. March 20, 2015.

⁵ The agricultural use of glyphosate has increased sharply since the development of crops that have been genetically modified to make them resistant to glyphosate. Glyphosate is also used in forestry, urban, and home applications. Glyphosate has been detected in the air during spraying, in water, and in food. The general population is exposed primarily through residence near sprayed areas, home use, and diet, and the level that has been observed is generally low. Id.

⁶ The Product's active ingredient of Glyphosate, isopropylamine salt increased .06% after the year 2007. MDSD, supra note, 1 at 1.

33. On May 13, 2019, a California jury found the Product likely caused a couple's cancer in Pilliod v. Monsanto Co., No. RF17862702 (Cal. Super. Ct., Cnty. of Alameda). The jury found on a preponderance of the evidence Roundup was a significant contributing factor in causing the plaintiff's non-Hodgkin's lymphoma.

34. As distinguishable from Mourina Doss v. General Mills, Southern District of Florida, case 0:2018cv61924 (2018) as the case was dismissed for lack of evidence leading to a concrete injury that was caused by consumption of oats treated with the dangerous chemical glyphosate which is labeled "probably" cacogenic.

GLYPHOSATE BANNED

35. Over 20 countries World-wide have banned the use of glyphosate-based herbicides over health concerns.⁸

36. There countries are including, but not limited to; Australia, Austria, Belgium, Bermuda, Canada, Denmark, France, Sweden, Switzerland, etc. All of these countries and other have either ban the use of glyphosate based herbicides or addressed health concerns over the use of the glyphosate based products.

37. Over 20 states within the United States have ban the use of glyphosate products or addressed health concerns over the use of products which contain glyphosate.

38. The State of California Benicia County has outlawed the use of glyphosate

⁷ In the case of Hardeman the Court was presented with the issue of "general causation" if the chemical Glyphosate is capable of causing cancer, specifically Hodgkin's Lymphoma. The court found the findings of the EPA and IARC are relevant in this determination. Further, the Court found that Monsanto's attempt to conceal documents; which revealed Monsanto's efforts to influence agencies. The Court ultimately allowed these documents to be admitted into evidence, along with various experts for the EPA and IARC. This matter resulted in a jury verdict in favor plaintiff and a jury award of \$80 million dollars. Hardeman v. Monsanto Co. et al., case number 3:16-mc-80232 (and the MDL is In re: Roundup Products Liability Litigation, case number 3:16-md-02741) . See also Pilliod et. al. v. Monsanto et. al., Superior Court of the Sate of California, Case No. RG17862702 (2019). See also Johnson v. Monsanto Company, Superior Court of the Sate of California, Case No. CGC-16-550128 (2018).

⁸Where is Glyphosate banned? <https://www.baumhedlundlaw.com/toxic-tort-law/monsanto-roundup-lawsuit/where-is-glyphosate-banned/>, (2019).

products, as well as several other counties.

39. The State of Florida Fish and Wildlife Conservation Commission has ceased the use of herbicides, glyphosate chief among them while the agency gathers more evidence of glyphosates harmful effects.

40. Further, several counties in Florida have decided the following:

- Fort Myers Beach, Florida – The city has decided to ban Roundup.
- Key West, Florida – Key West City Commission banned the use of Roundup on city-owned property, citing a \$2.055 billion jury verdict in California.
- Martin County, Florida – The local government instituted a Roundup ban that applies to all county employees and contractors working on county projects.
- Miami, Florida – Announced a city-wide ban on glyphosate-based herbicides in February of 2019.
- Miami Beach, Florida – Passed a resolution banning the use of glyphosate weed killers for landscaping and maintenance work on city-owned property.
- North Miami, Florida – City Council approved a plan calling for the gradual reduction of pesticide use on city property and a study on alternative pesticides.
- Satellite Beach, Florida – City Council unanimously approved a resolution that bans the city and its contractors from using glyphosate-based herbicides, including Monsanto’s Roundup.
- Stuart, Florida – City commissioners voted to ban glyphosate, calling for an integrated pest control plan that reduces the use of glyphosate with the ultimate goal of eliminating chemicals.⁹

CAUSE OF ACTION

COUNT I: VIOLATIONS OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (“FDUTPA”)

1. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs one (1) through forty (40) here of this Complaint as if fully set forth verbatim.

2. Plaintiff was at all times material an individual and are thus a “consumer,” as

⁹ Id.

Defined by section 501.203(7), Florida Statutes.

3. Defendant was at all times materially engaged in advertising, providing, offering, and distributing by sale a tangible good, otherwise known as “trade or commerce”, as defined by section 501.203(8), Florida Statutes.

4. Defendant, by advertising, distributing, and selling the Product that was deceptively marketed by omission of material information, engaged in unfair and deceptive acts and practices as contemplated in section 501.204(1), Florida Statutes.

5. Plaintiff is entitled to bring this Action for declaratory and injunctive relief for the benefit of themselves and all other consumers throughout Florida who have been, are, and will be aggrieved by the Product, pursuant to section 501.211(1), Florida Statutes.

6. This Action concerns a bona fide, actual, and existing need for declaration that the Product is deceptively labeled and marketed, for the benefit of Plaintiff.

7. Additionally, Plaintiff is entitled to bring this Action pursuant to section 501.211(2), Florida Statutes, for actual damages, which amount to the purchase price of the Product, as they have paid a premium price for the Product which has been marketed, advertised, sold, and distributed.

8. Plaintiff has and will incur reasonable costs and attorney’s fees in pursuit of this Action.

WHEREFORE, Plaintiff pray this Court enter a judgment declaring the Product label to be materially misrepresentative of the Product, and that the Product is therefore deceptively marketed and sold; enjoining Defendant from selling marketing, distributing, and selling the Product unless/until Defendant remedies the Product packaging or in the alternative using Plaintiff’s suggested warning labels; awarding Plaintiff’s actual

damages, costs, and reasonable attorney's fees pursuant to section 501.211(2), Florida Statutes; and granting all other relief the Court deems just and proper.

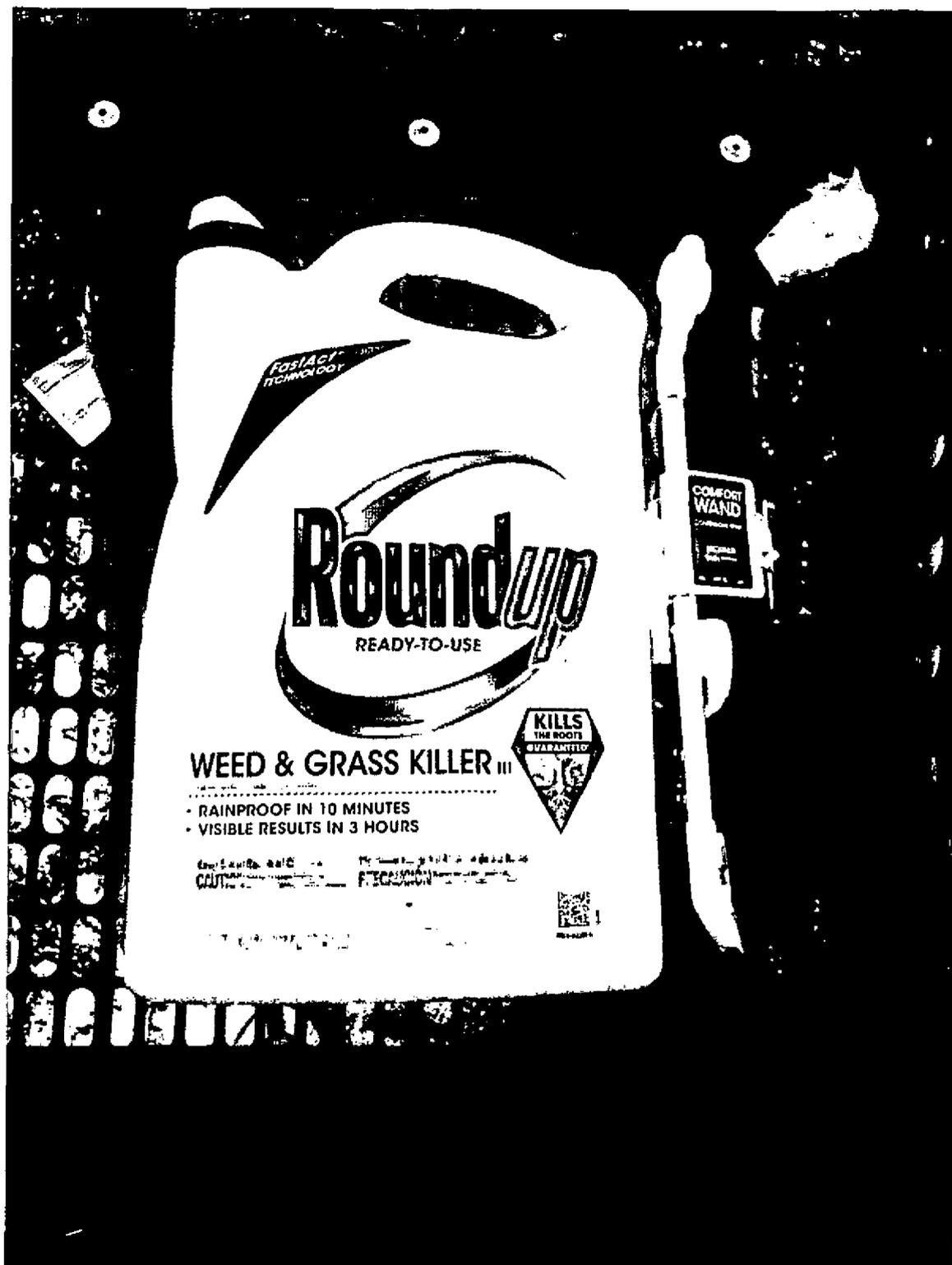
DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable.

Submitted:

By: /s/ Howard W. Rubinstein
Howard W. Rubinstein, Esq.
The Law Office of Howard W. Rubinstein
1281 N. Ocean Dr. Apt. 198
Singer Island, FL 33404
Telephone: 832-715-2788
Fax: 561-688-0630
Email: howardr@pdq.net

EXHIBIT A





DID YOU KNOW?

- Spray the leaves to kill the root.
- Glyphosate targets an enzyme found in plants but not in people or pets.

Roundup

Plant 1-3 Days After Application for maximum results.

Control Moss
Extend Weed

Plant Mosaic
& Spray

How To Use



Exhibit B

Front A



Current Package



Now CAUTION
Cancer Warning box

Alternate options

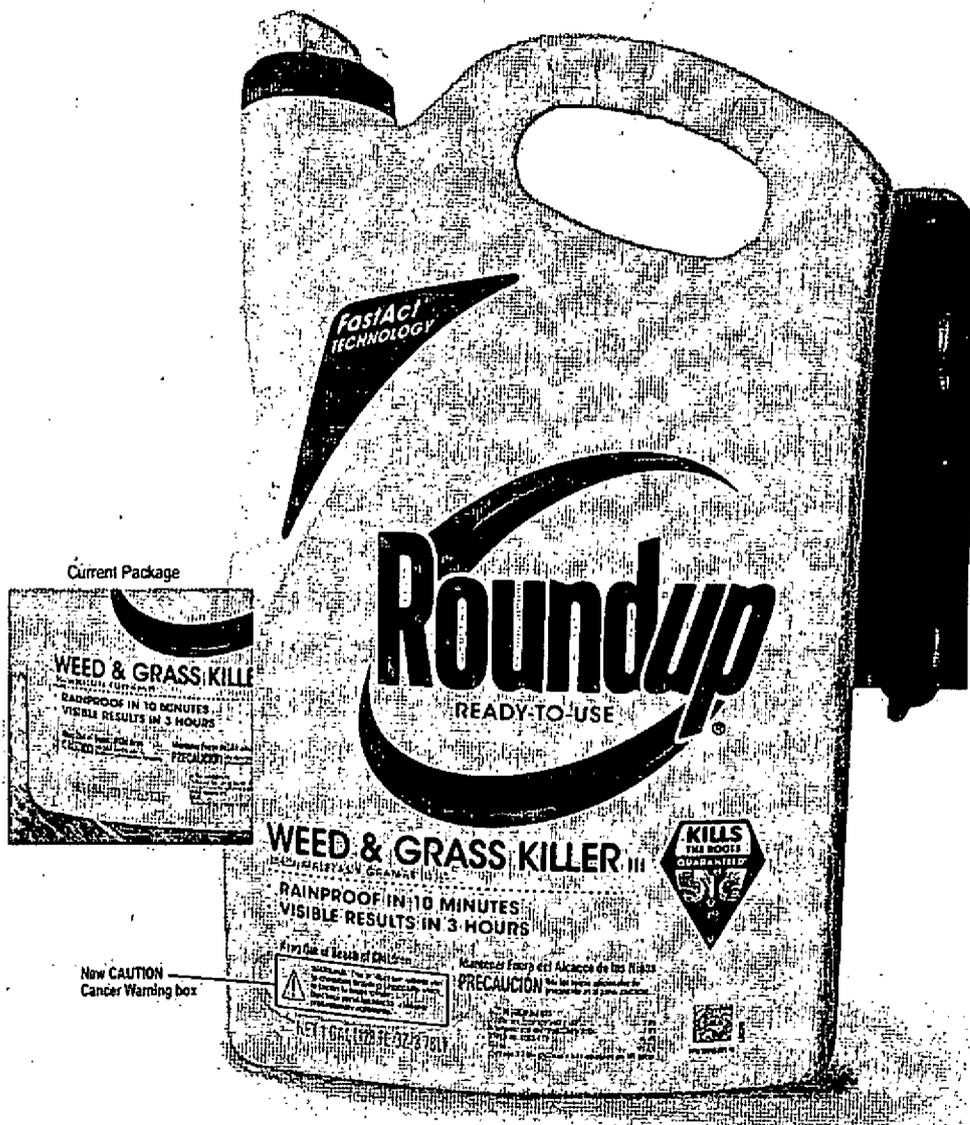
A-2

CAUTION This product can irritate your skin, eyes, nose, throat, and lungs. Avoid contact with eyes, nose, throat, and lungs. Wash thoroughly with soap and water. Avoid breathing dust or mist. Avoid contact with skin. Avoid contact with clothing. Avoid contact with animals. Avoid contact with children. Avoid contact with pets. Avoid contact with food. Avoid contact with feed. Avoid contact with water. Avoid contact with fire. Avoid contact with heat. Avoid contact with electricity. Avoid contact with machinery. Avoid contact with vehicles. Avoid contact with buildings. Avoid contact with structures. Avoid contact with utilities. Avoid contact with power lines. Avoid contact with telecommunication lines. Avoid contact with radio frequency signals. Avoid contact with electromagnetic fields. Avoid contact with static electricity. Avoid contact with lightning. Avoid contact with fire. Avoid contact with heat. Avoid contact with electricity. Avoid contact with machinery. Avoid contact with vehicles. Avoid contact with buildings. Avoid contact with structures. Avoid contact with utilities. Avoid contact with power lines. Avoid contact with telecommunication lines. Avoid contact with radio frequency signals. Avoid contact with electromagnetic fields. Avoid contact with static electricity. Avoid contact with lightning.

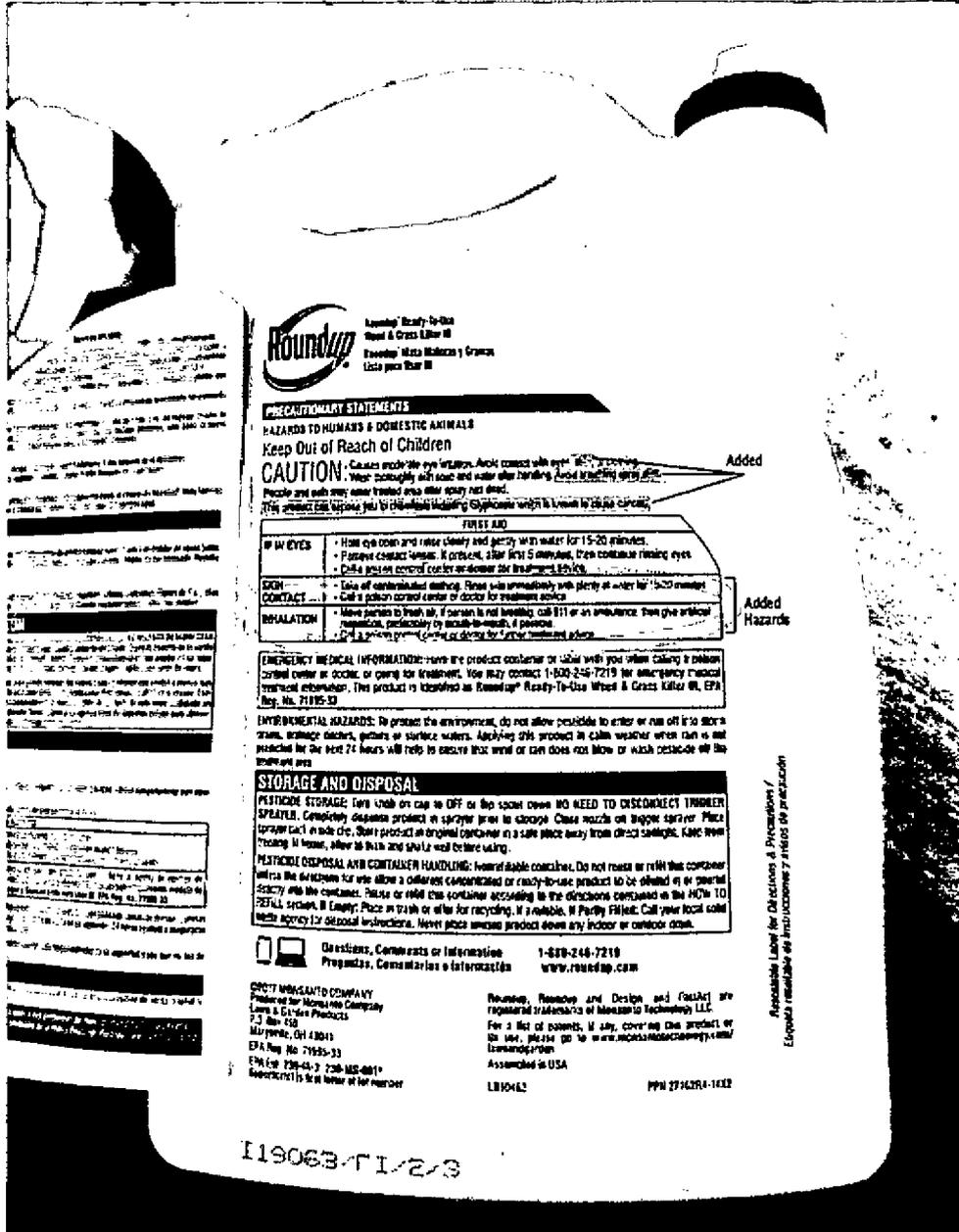
CAUTION Avoid contact with eyes and skin. Avoid contact with clothing. Avoid contact with animals. Avoid contact with children. Avoid contact with pets. Avoid contact with food. Avoid contact with feed. Avoid contact with water. Avoid contact with fire. Avoid contact with heat. Avoid contact with electricity. Avoid contact with machinery. Avoid contact with vehicles. Avoid contact with buildings. Avoid contact with structures. Avoid contact with utilities. Avoid contact with power lines. Avoid contact with telecommunication lines. Avoid contact with radio frequency signals. Avoid contact with electromagnetic fields. Avoid contact with static electricity. Avoid contact with lightning.

A-3

Front B



Back A-1



Roundup
Ready-To-Use
Weed & Grass Killer III
Kills weeds & grasses
Kills your lawn too

CAUTIONARY STATEMENTS

HAZARDOUS TO HUMANS & DOMESTIC ANIMALS
Keep Out of Reach of Children

CAUTION Causes moderate eye irritation. Avoid contact with eyes. If contact occurs, flush eyes thoroughly with cool water after handling. Avoid breathing spray mist. People and pets may come in contact with other areas not treated. If you suspect you have been harmed by this product, call your doctor for medical advice.

Added

FIRST AID	
IF IN EYES	Hold eye open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present, after first 5 minutes, then continue rinsing eyes. Call a poison control center or doctor for treatment advice.
SKIN CONTACT	Wash off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. Call a poison control center or doctor for treatment advice.
INHALATION	Move person to fresh air. If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth, if possible. Call a poison control center or doctor for further treatment advice.

Added Hazards

EMERGENCY MEDICAL INFORMATION: Have the product container or label with you when calling a poison control center or doctor or going for treatment. Use only contact 1-800-246-7279 for emergency medical treatment information. This product is identified as Roundup® Ready-To-Use Weed & Grass Killer III, EPA Reg. No. 71995-33.

ENVIRONMENTAL HAZARDS: To protect the environment, do not allow pesticide to enter or run off to storm drains, surface waters, ditches or surface waters. Applying this product in calm weather when rain is not predicted for the next 24 hours will help to ensure that wind or rain does not blow or wash pesticide off the treated area.

STORAGE AND DISPOSAL

PESTICIDE STORAGE: This spray can be left on the spray can. NO NEED TO DISCONNECT TRIGGER SPRAYER. Completely disassemble trigger in spray gun to storage. Close nozzle on trigger sprayer. Place trigger gun in a safe place. Store product in original container in a safe place away from direct sunlight. Keep from freezing. If frozen, allow to thaw and shake well before using.

PESTICIDE DISPOSAL AND CONTAINER HANDLING: Nonrefillable containers: Do not reuse or refill this container unless the directions for use allow a different concentration or ready-to-use product to be diluted in or poured directly into the container. Refill or reuse only containers according to the directions provided on the label TO RE-FILL SYSTEM. If Empty: Place in trash or other for recycling, if available. If Pesticide Filled: Call your local solid waste agency for disposal instructions. Never place unused product down any drain or outside drain.

Questions, Comments or Information: 1-800-246-7279
Preguntas, Comentarios e Información: www.roundup.com

DUPILO MONSANTO COMPANY
Prepared for Monsanto Company
Lawn & Garden Products
713
Murrayville, OH 43041
EPA Reg. No. 71995-33
EPA Est. 288-04-3 738-M2-001*
Manufactured in the USA

Responsible Label for Directions & Precautions /
Etiqueta responsable de Instrucciones y Advertencias de Precaución

11908811/2/3

Back A-2

Roundup Ready-To-Use Weed & Grass Killer III
 Ready-To-Use Weed & Grass Killer III
 Look for this II

PRECAUTIONARY STATEMENTS
HAZARDS TO HUMANS & DOMESTIC ANIMALS
Keep Out of Reach of Children
CAUTION **Roundup Ready-To-Use Weed & Grass Killer III** (Avoid contact with eyes or clothing. Wash thoroughly with soap and water after handling. Do not get the liquid part of this product on your face or skin.)
 This product may be harmful if it comes in contact with sensitive areas of the body (e.g., mouth, throat, etc.)

FIRST AID

IF IN EYES	<ul style="list-style-type: none"> Hold eyes open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present, after first 5 minutes, then continue rinsing eyes. Call a poison control center or doctor for further advice. 	Revised and Added
SKIN CONTACT	<ul style="list-style-type: none"> Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. Call a poison control center or doctor for further advice. 	
INHALATION	<ul style="list-style-type: none"> Move person to fresh air. If person is not breathing, call 911 or an ambulance. Then give artificial respiration, preferably by mouth-to-mouth, if possible. Call a poison control center or doctor for further treatment advice. 	
IF SWALLOWED	<ul style="list-style-type: none"> Do not induce vomiting. Call a poison control center or doctor for treatment advice. 	

ADDED HAZARDS

EMERGENCY MEDICAL INFORMATION: Have the product container or label with you when calling a poison control center or doctor or going for treatment. You may contact 1-800-746-7279 for emergency medical treatment information. This product is classified as Roundup® Ready-To-Use Weed & Grass Killer III, EPA Reg. No. 71816-33.

ENVIRONMENTAL HAZARDS: To protect the environment, do not allow pesticide to enter or run off into streams, drainage ditches, ditches or surface waters. Applying this product in calm weather when run is not predicted for the next 24 hours will help to ensure that area or town does not allow or wash pesticide off the next day.

STORAGE AND DISPOSAL

PESTICIDE STORAGE: Turn knob on cap to OFF or flip switch down. **NO NEED TO DISCONNECT TRIGGER SPRAYER.** Completely dispose product in sprayer until it stops. Close nozzle on trigger sprayer. Place nozzle back in side of. Store product in original container in a safe place away from direct sunlight. Keep from freezing. If frozen, allow to thaw and shake well before using.

PESTICIDE DISPOSAL AND CONTAINER HANDLING: Non-refillable container. Do not reuse or refill this container. After the directions for use allow a different concentration of Ready-To-Use products to be added in or poured directly into the container. Refill or refill the container according to the directions contained in the ECH TO REFILL section. If empty: Place in trash or other for recycling, if available. If Partly Filled, Call your local solid waste agency for disposal instructions. Never place waste product down any indoor or outdoor drain.

Questions, (Prepackets) 1-800-246-7279 www.roundup.com

ROUNDUP READY-TO-USE WEED & GRASS KILLER III
 Produced by Monsanto Company
 P.O. Box 412
 Maryville, OH 43041
 EPA Reg. No. 71816-33
 EPA Est. 71816-33-001
 Substrate is not listed as hazardous

Roundup Ready-To-Use Weed & Grass Killer III is a registered trademark of Monsanto Technology LLC. For a list of patents, if any, covering this product or its ingredients, please go to www.monsanto.com/roundup. Assembled in USA.

Responsible Label for Directions & Precautions /
 Equipped ready-to-use weed & grass killer

119063-PI 2/3

Pamphlet A

ADDED RUBBER GLOVES TO HANDS

CAUTION STATEMENTS

REPLACE WITH REVISED PRECAUTIONARY STATEMENTS FROM BACK PANEL

INSTRUCTIONS FOR USE

ADDITIONAL TIPS

STORAGE AND DISPOSAL

PRECAUTIONS

CAUTIONS DEL PRODUCTO

INSTRUCCIONES DE USO

5069-F1/2/3

Pamphlet B

FACTS

PRECAUTIONARY STATEMENTS

DIRECTIONS FOR USE

CONSUMER GUARANTEE

ADDITIONAL INFO

EPO

EPO

113063/F1/2/3

Pamphlet C

STORAGE AND DISPOSAL

Read and Store
 and Dispose Copy of
 this and all other
 Regulatory Statement
 to have date

DIRECTIONS FOR USE

CONSUMER GUARANTEE

GATES DE PRODUCTO

ADVERTENCIA

EPO

EPI/139011

Pamphlet D

ADDED SAFETY EQUIPMENT
copy box with images

FUNCTIONS

DIRECTIONS FOR USE

STORAGE AND DISPOSAL

REPOSITIONED STORAGE AND DISPOSAL
copy and revised and moved
Precautionary Statement
to back panel

CONSUMER GUARANTEE

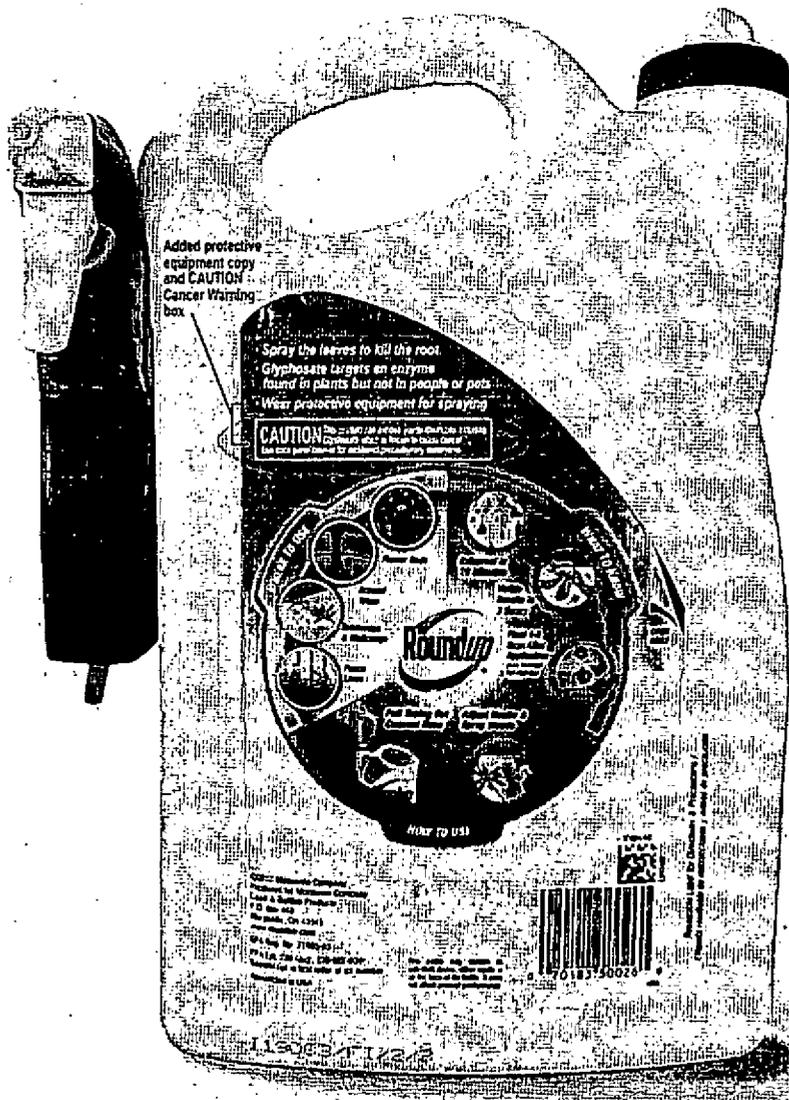
DAIOS DEL PRODUCTO

INSTRUCCIONES DE USO

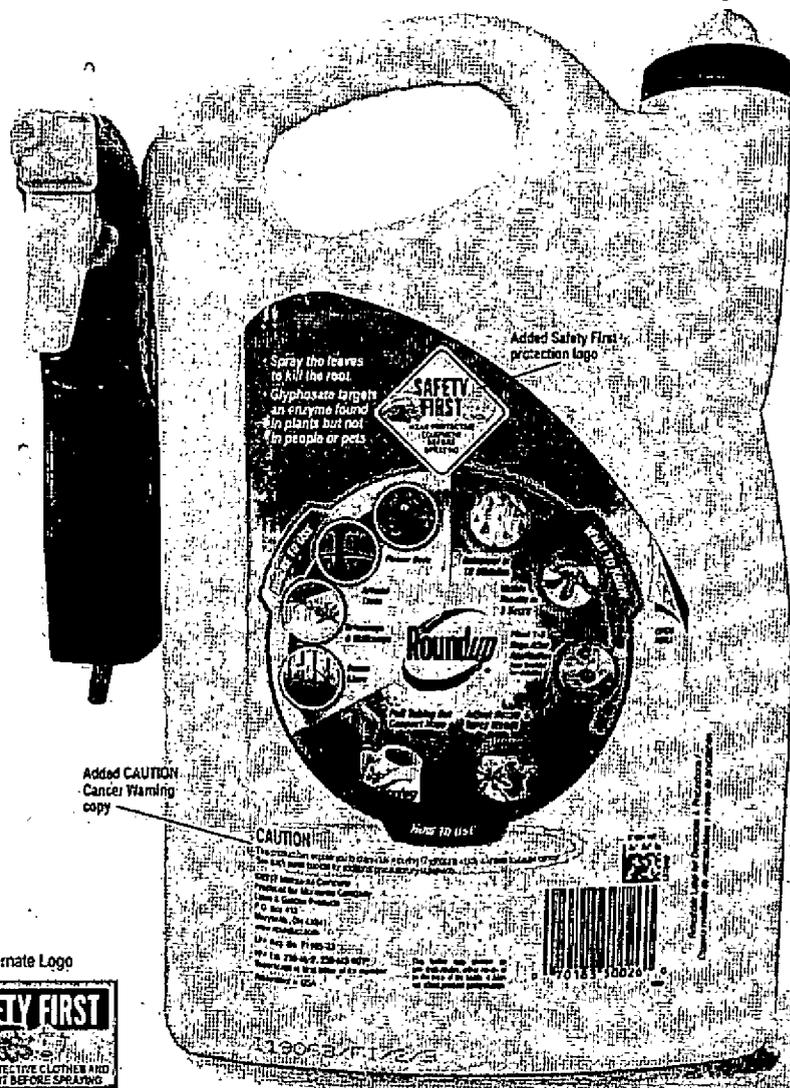
ADDITIONAL TIPS

1993/11/23

Pamphlet Cover
BACK B-1



Pamphlet Cover
BACK B-2



Alternate Logo



BACK B-3

Home Depot Roundup Display with Cancer Warning Signs



Added
Cancer
Warning
signs