

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of)

CERTAIN PET FOOD TREATS)
_____)

Inv. No. 337-TA-511

ISSUANCE OF A LIMITED EXCLUSION ORDER AGAINST A RESPONDENT
FOUND IN DEFAULT; TERMINATION OF INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order against a respondent found in default in the above-captioned investigation and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by complainants, Thomas J. Baumgartner and Hillbilly Smokehouse, Inc., both of Rogers, Arkansas. 69 *Fed. Reg.* 32044 (June 8, 2004). The complainants alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pet food treats by reason of infringement of United States Design Patent No. 383,866 (the "866 patent"). The amended complaint named six respondents, including TsingTao ShengRong Seafood, Inc. of China ("TsingTao China"). The Commission has terminated the investigation as to the five other respondents based on findings of non-infringement, failure to prosecute, or settlement agreements. No petitions for review of the ALJ's Initial Determinations ("IDs") were filed.

On August 19, 2004, complainants filed a motion for an order directed to several respondents, including TsingTao China, to show cause why they should not be found in default for failing to respond to the complaint and notice of investigation. TsingTao China did not file a

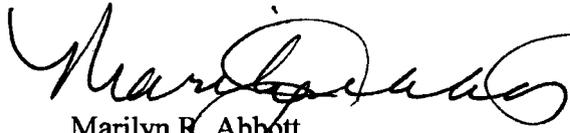
response to complainants' motion. On October 4, 2004, the ALJ issued an order (Order No. 6) requiring TsingTao China to show cause why it should not be found in default. TsingTao China did not respond to the show cause order. On November 10, 2004, the ALJ issued an ID (Order No. 8), which was not reviewed by the Commission, finding respondent TsingTao China in default. On November 22, 2004, the complainants filed a motion for immediate relief against TsingTao China based on the '866 patent.

On April 13, 2005, the Commission issued a notice indicating (1) that it had determined not to review the ALJ's ID granting the Commission investigative attorney's ("IA") motion for summary determination of no violation because of noninfringement of the '866 patent by Pet Center, Inc., and (2) that it was terminating the investigation as to the last respondent, Pet Center. 70 *Fed. Reg.* 20596 (April 20, 2005). The Commission also requested briefing on the issues of remedy, the public interest, and bonding relating to the default finding of unlawful importation and sale of infringing products by TsingTao China. *Id.* The IA submitted his brief on remedy, the public interest, and bonding and his proposed order on April 25, 2005. The complainants did not submit a brief or a proposed order and the respondent did not file a reply submission.

The Commission found that each of the statutory requirements of section 337(g)(1)(A)-(E), 19 U.S.C. § 1337(g)(1)(A)-(E), has been met with respect to defaulting respondent TsingTao China. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. § 1337(g)(1), and Commission rule 210.16(c) 19 C.F.R. § 210.16(c), the Commission presumed the facts alleged in the amended complaint to be true. The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of pet food treats covered by the '866 patent that are manufactured abroad by or on behalf of, or imported by or on behalf of, TsingTao China or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. § 1337(g)(1), do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the amount of bond to permit temporary importation during the Presidential review period shall be in the amount of 100 percent of the entered value of the infringing imported pet food treats. The Commission's order was delivered to the President on the day of its issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.16(c) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.16(c)).

By order of the Commission.


Marilyn R. Abbott
Secretary to the Commission

Issued: June 1, 2005

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

CERTAIN PET FOOD TREATS

Inv. No. 337-TA-511

LIMITED EXCLUSION ORDER

The Commission instituted this investigation on June 8, 2004, based on an amended complaint filed by complainants, Thomas J. Baumgartner and Hillbilly Smokehouse, Inc., both of Rogers, Arkansas, naming six respondents, including TsingTao ShengRong Seafood, Inc. of China ("TsingTao China"). 69 *Fed. Reg.* 32044 (June 8, 2004). The complaint alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pet food treats by reason of infringement of United States Design Patent No. 383,866 (the "'866 patent").

TsingTao China did not respond to the complaint, the notice of investigation, or an order to show cause why it should not be found in default. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. § 1337(g)(1), and Commission Rule 210.16(a), 19 C.F.R. § 210.16(a), the Commission found TsingTao China to be in default. Under 337(g)(1), the Commission presumes the facts alleged in the

complainants' complaint to be true. The complainants seek relief as to TsingTao China's pet food treats that infringe the claim found in the '866 patent.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of pet food treats that infringe the '866 patent and are manufactured abroad by or on behalf of, or imported by or on behalf of, TsingTao China, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(g)(1) do not preclude issuance of the limited exclusion order and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of pet food treats that are subject to this Order.

Accordingly, the Commission hereby **ORDERS** that:

1. Pet food treats that infringe the '866 patent and are manufactured abroad by or on behalf of, or imported by or on behalf of, TsingTao China, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, including, without limitation, TsingTao China's pet food treats, are excluded from entry for consumption into the United States, entry for

consumption from a foreign trade zone, or withdrawal from a warehouse for consumption for the remaining terms of those patents, except under license of the patent owner or as provided by law.

2. Pet food treats that are excluded by paragraph 1 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption under bond in the amount of 100 percent of the entered value of such treats pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action, but, in any event, not later than sixty (60) days after the date of receipt of this action.

3. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to pet food treats that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

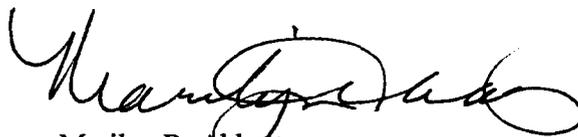
4. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

5. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the

Department of Justice, the Federal Trade Commission, and the U.S. Bureau of
Custom and Border Protection.

6. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Marilyn R. Abbett', with a large, stylized flourish at the end.

Marilyn R. Abbett
Secretary to the Commission

Issued: June 1, 2005

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ISSUANCE OF A LIMITED EXCLUSION ORDRE AGAINST A RESPONDENT FOUND IN DEFAULT; TERMINATION OF INVESTIGATION** was served upon all parties and Commission Investigative Attorney Michelle Walters, Esq., via first class mail and air mail where necessary on June 1, 2005.



Marilyn R. Abbott, Secretary
**U.S. International Trade
Commission**
500 E Street, SW Rm 112
Washington, DC 20436

ON BEHALF OF COMPLAINANT
THOMAS J. BAUMGARTNER AND
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