

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

In the Matter of)	
)	
CERTAIN INSECT TRAPS)	Inv. No. 337-TA-498
)	

**NOTICE OF COMMISSION DETERMINATION TO TERMINATE THE
INVESTIGATION IN ITS ENTIRETY ON THE BASIS OF A SETTLEMENT
AGREEMENT; REQUEST FOR WRITTEN SUBMISSIONS ON REMEDY, THE
PUBLIC INTEREST, AND BONDING WITH RESPECT TO A RESPONDENT FOUND IN
DEFAULT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation on the basis of a settlement agreement. Notice is also hereby given that the Commission is requesting briefing on remedy, the public interest, and bonding with respect to a respondent found in default.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Ph.D., Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. 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 American Biophysics Corporation ("ABC") of Greenwich, Rhode Island. 68 *Fed. Reg.* 53752 (September 12, 2003). ABC alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain insect traps by reason of infringement of claims 1 and 32 of U.S. Patent No. 6,145,243 (hereinafter "the '243 patent"). The complaint

named Ferrellgas, LP, of Liberty, Missouri as respondent.

On December 8, 2003, the administrative law judge (“ALJ”) issued an initial determination (“ID”) amending the complaint and notice of investigation to add Blue Rhino Global Sourcing, LLC, of Winston-Salem, North Carolina, Guangdong Dong Fang Imp. & Exp. Corp. of Shenzhen, China, and Lentek International, Inc. of Kissimmee, Florida (“Lentek”) as respondents.¹ This ID was not reviewed by the Commission. *See* Order No. 5 Initial Determination; Notice of Commission Decision Not to Review, 69 Fed. Reg. 2003 (2004).

On April 19, 2004, the ALJ issued an ID, which was not reviewed by the Commission, finding respondent Lentek in default. *See* Order No. 11 Initial Determination (April 19, 2004); Notice of Commission Decision Not to Review (May 19, 2004).

On September 10, 2004, the ALJ issued his final initial determination (“ID”) finding no violation of section 337 based on a finding of no infringement of claims 1 and 32 of the ‘243 patent by the remaining respondents, Ferrellgas, LP, Blue Rhino Consumer Products, LLC, Blue Rhino Global Sourcing, LLC, and Guangdong Dong Fang Imp. & Exp. Corp. (collectively “Ferrellgas/BlueRhino/GDF”). On September 22, 2004, ABC and Ferrellgas/BlueRhino/GDF filed a joint motion for an extension of time in which to file their petitions for review of the ALJ’s final ID. On September 24, 2004, the ALJ issued a recommended determination on remedy and bonding with respect to respondents Ferrellgas/BlueRhino/GDF.

Meanwhile, on September 23, 2004, the Commission granted all parties their request for an extension and extended the deadline for determining whether to review the final ID until October 1, 2004.

On September 30, 2004, ABC and respondents, Ferrellgas/Blue Rhino/GDF, filed a joint motion to terminate the investigation as to all issues based upon a settlement agreement. The Commission found that there was no indication that termination of the investigation would have an adverse impact on the public interest and that termination based on a settlement agreement is generally in the public interest. Accordingly, the joint motion to terminate the investigation was granted.

With respect to respondent Lentek, section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission Rule 210.16(c), 19 CFR 210.16(c), authorizes the Commission to order limited relief against a respondent found in default unless, after consideration of public interest factors, it finds that such relief should not issue. In this investigation, the ALJ found respondent Lentek in default and this decision was not reviewed by the Commission. As a result, ABC requested issuance of (a) a permanent exclusion order excluding from entry into the United States all of Lentek’s “Mosquito Trap” products that infringe the claims of the asserted patents; and (b) a permanent cease and desist order prohibiting the importation into the United States, the sale for importation or sale within the United States after importation of all of Lentek’s “Mosquito Trap” products that infringe the claims of the asserted patents.

The Commission may issue an order that could result in the exclusion of Lentek’s “Mosquito Trap” products from entry into the United States, and/or issue one or more cease and desist orders that

¹On April 16, 2004, CPD Associates, Inc. merged with Blue Rhino Corp. On April 20, 2004, Blue Rhino Corp. converted into a Delaware limited liability company called Blue Rhino, LLC. Immediately thereafter, on April 21, 2004, Blue Rhino, LLC merged into Ferrellgas, LP.

could result in Lentek being required to cease and desist from engaging in unfair acts in the importation and sale of “Mosquito Trap” products. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission’s action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the September 24, 2004, recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission’s consideration. The written submissions and proposed remedial orders must be filed no later than close of business on November 8, 2004. Reply submissions must be filed no later than the close of business on November 15, 2004. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission’s Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.16(c) and 210.21 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16(c) and 210.21).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: October 25, 2004