

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

_____)
In the Matter of)

CERTAIN PET FOOD TREATS)
_____)

Inv. No. 337-TA-511

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING THE COMMISSION INVESTIGATIVE ATTORNEY'S
MOTION FOR SUMMARY DETERMINATION OF NO VIOLATION; TERMINATION
OF INVESTIGATION AS TO ONE RESPONDENT; 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 not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") in the above-captioned investigation granting the Commission investigative attorney's ("IA") motion for summary determination of no violation because of noninfringement of U.S. Design Patent No. 383,866 ("the '866 patent"). Notice is also hereby given that the Commission is requesting briefing on remedy, public interest, and bonding with respect to a respondent previously found in default.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, 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 complainants Thomas J. Baumgartner and Hillbilly Smokehouse, Inc., both of Rogers, Arkansas (collectively "complainants"). 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 the '866 patent. The complaint named six respondents including Pet Center, Inc. ("Pet Center") of Los Angeles, California, and Tsingtao Shengrong Seafood, Inc. of China ("Tsingtao China"). The Commission has terminated the investigation as to four other respondents. No petitions for review of the ALJ's IDs were filed. On November 10, 2004, the ALJ found Tsingtao China in default (Order No. 8).

On January 31, 2005, the IA filed a motion for summary determination of noninfringement of the '866 patent with respect to Pet Center. The complainants filed an opposition to the IA's motion on February 11, 2005. On March 18, 2005, the ALJ issued an ID (Order No. 16) granting the IA's motion for summary determination. No petitions for review of the ID were filed. The Commission has determined not to review this ID and to terminate the investigation as to Pet Center.

On November 22, 2004, the complainants filed a declaration requesting immediate relief against defaulting respondent Tsingtao China. 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. The Commission may issue an order that could result in the exclusion of Tsingtao China's pet food treats from entry into the United States, and/or issue one or more cease and desist orders that could result in Tsingtao China being required to cease and desist from engaging in unfair acts in the importation and sale of its pet food treats. 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).

When 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. Complainants and the IA 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 April 25, 2005. Reply submissions must be filed no later than the close of business on May 2, 2005. 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 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16(c) and 210.42).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: April 13, 2005