

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

In the Matter of)
)

CERTAIN INSECT TRAPS)
_____)

Inv. No. 337-TA-498

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**NOTICE OF COMMISSION ISSUANCE OF A LIMITED EXCLUSION ORDER AND
CEASE AND DESIST ORDER AGAINST 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 issued a limited exclusion order and a cease and desist order against a respondent found in default in the above-captioned investigation.

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 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 various claims of U.S. Patent Nos. 6,145,243 (hereinafter "the '243 patent") and 6,286,249 (hereinafter "the '249 patent"). The complaint named Ferrellgas, LP, of Liberty, Missouri as a respondent.¹

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.

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, Guangdon Dong Fang Imp. & Exp. Corp. of Shenzhen, China, and Lentek International, Inc. of Kissimmee, Florida ("Lentek") as respondents. This ID was not reviewed by the Commission (Order No. 5).

On April 19, 2004, the ALJ issued an ID, which was not reviewed by the Commission, finding respondent Lentek in default (Order No. 11). On April 27, 2004, ABC filed a declaration for immediate relief against Lentek based on both patents at issue. On May 24, 2004, ABC filed a motion to amend its request for immediate relief against Lentek by withdrawing its request for relief with respect to the '243 patent.

On September 10, 2004, the ALJ issued his final 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 Guangdon Dong Fang Imp. & Exp. Corp. (collectively "Ferrellgas/BlueRhino/GDF"). (On April 9, 2004, the ALJ had issued an unreviewed ID effectively terminating the investigation as to the '249 patent with respect to these respondents.)

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. On October 25, 2004, the Commission granted the joint motion to terminate the investigation against Ferrellgas/BlueRhino/GDF and further requested written submissions on the issues of remedy, the public interest and, bonding relating to the default finding of unlawful importation and sale of infringing products by Lentek. The Commission investigative attorney submitted his brief on remedy, the public interest and bonding on November 2, 2004. ABC submitted its briefing on remedy, the public interest and bonding on November 8, 2004. No reply submissions were filed.

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 Lentek. 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 insect traps covered by claims 1-6, 8, 13-15, 17, 18, 29, 31, 34, 36-41 and 44 of the '249 patent. The order covers insect traps that are manufactured abroad by or on behalf of, or imported by or on behalf of, Lentek, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission also determined to issue a cease and desist order prohibiting Lentek from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for insect traps covered by the above-mentioned claims of the '249 patent. The Commission further determined

Immediately thereafter, on April 21, 2004, Blue Rhino, LLC merged into Ferrellgas, LP.

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 bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles. The Commission's orders were delivered to the President on the day of their 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.

A handwritten signature in black ink, appearing to read 'Marilyn R. Abbott', written in a cursive style.

Marilyn R. Abbott
Secretary to the Commission

Issued: December 10, 2004

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN INSECT TRAPS

Inv. No. 337-TA-498

LIMITED EXCLUSION ORDER

The Commission instituted this investigation on September 15, 2003, based on an amended complaint against respondent filed by complainant American Biophysics Corporation ("ABC") of East Greenwich, Rhode Island, naming Blue Rhino Corp. of Winston-Salem, North Carolina, as a respondent. 68 *Fed. Reg.* 53752 (September 15, 2003). 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 insect traps by reason of infringement of various claims of U.S. Patent No. 6,145,243 or of U.S. Patent No. 6,286,249 (hereinafter "the '249 patent"). The complaint was amended to add Lentek International, Inc. ("Lentek") of Kissimmee, FL, as a respondent on January 13, 2004. 69 *Fed. Reg.* 2004 (January 13, 2004).

Lentek 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

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C.F.R. § 210.16(a), the Commission found Lentek to be in default. Under 337(g)(1) the Commission presumes the facts alleged in ABC's complaint to be true. The complainant seeks relief as to Lentek insect traps that infringe claims 1-6, 8, 13-15, 17, 18, 29, 31, 34, 36-41 or 44 of the '249 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 insect traps that infringe claims 1-6, 8, 13-15, 17, 18, 29, 31, 34, 36-41 or 44 of U.S. Patent No. 6,286,249, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Lentek. The Commission has also determined to issue a cease and desist order that prohibits Lentek from conducting various activities in the U.S. including importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for insect traps covered by claims 1-6, 8, 13-15, 17, 18, 29, 31, 34, 36-41 and 44 of the '249 patent.

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 insect traps that are subject to this Order.

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

1. Insect traps that infringe claims 1-6, 8, 13-15, 17, 18, 29, 31, 34, 36-41 or 44 of U.S. Patent No. 6,286,249 that are manufactured abroad by or on behalf of, or imported by or on behalf of, Lentek International, Inc., or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, including, without limitation, Lentek's "Mosquito Trap" insect traps, 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. Insect traps 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 entered value 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 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 insect traps 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.



Marilyn R. Abbott
Secretary to the Commission

Issued: December 10, 2004.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN INSECT TRAPS

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ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Lentek International, Inc. 3700 Commerce Boulevard, Kissimmee, FL 34741, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, insect traps that infringe claims 1-6, 8, 13-15, 17, 18, 29, 31, 34, 36-41 or 44 of U.S. Patent No. 6,286,249, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

Definitions

As used in this Order:

- (A) "Commission" shall mean the United States International Trade Commission.
- (B) "American Biophysics Corporation," "ABC," or "Complainant" shall mean American Biophysics Corporation, 140 Frenchtown Road, North Kingstown, RI 02852.
- (C) "Lentek International, Inc.," "Lentek", or "Respondent" shall mean Lentek International, Inc., 3700 Commerce Boulevard, Kissimmee, FL 34741.
- (E) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Lentek or its majority owned or controlled subsidiaries, successors, or assigns.

(F) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(G) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

(H) The term "covered products" shall mean: insect traps that infringe claims 1-6, 8, 13-15, 17, 18, 29, 31, 34, 36-41 or 44 of U.S. Patent No. 6,286,249, including Respondent's "Mosquito Trap" insect traps.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the respective patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or

(E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent No. 6,286,249 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2005. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of covered products that Respondent has imported or sold in the United States after importation during the reporting period and the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

Any failure to make the required report or the filing of any false or inaccurate report shall

constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI.

Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees

who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent No. 6,286,249.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if

Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), subject to Respondent posting a bond of 100% of entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the President approves, or does not disapprove within the Presidential review period, this Order, unless the U.S. Court of Appeals for

the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

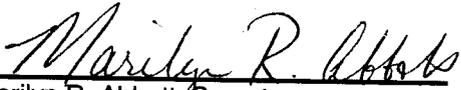


Marilyn R. Abbott
Secretary to the Commission

Issued: December 10, 2004

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF COMMISSION ISSUANCE OF A LIMITED EXCLUSION ORDER AND A CEASE AND DESIST ORDER AGAINST A RESPONDENT FOUND IN DEFAULT**, was served upon all parties via first class mail and air mail where necessary on December 13, 2004.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
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