

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

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**In the Matter of**

**CERTAIN INSECT TRAPS**

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) **Inv. No. 337-TA-498**  
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**NOTICE OF COMMISSION ISSUANCE OF A LIMITED EXCLUSION ORDER AND A  
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.<sup>1</sup>

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<sup>1</sup>On 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

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

covered by the above-mentioned claims of the '249 patent. 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 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.

Marilyn R. Abbott  
Secretary to the Commission

Issued: December 10, 2004