

sale for importation, and the sale within the United States after importation of certain L-lysine feed products and genetic constructs for production thereof by reason of infringement of claims 13, 15–19, and 21–22 of U.S. Patent No. 5,827,698 (“the ‘698 patent”) and claims 1, 2, 15, and 22 of U.S. Patent No. 6,040, 160 (“the ‘160 patent”).

The complaint named as respondents Global Bio-Chem Technology, Group Company Ltd. (Admiralty, Hong Kong), Changchun Dacheng Bio-Chem Engineering Development Co., Ltd., (Jilin Province, China), Changchun Baocheng Bio Development Co., Ltd. (Jilin Province, China), Changchun Dahe Bio Technology Development Co., Ltd. (Jilin Province, China), Bio-Chem Technology (HK) Ltd. (Admiralty, Hong Kong) (collectively, “GBT”). 71 FR 30958. On June 29, 2006, Ajinomoto Heartland further amended the complaint and notice of institution by adding its parent company, Ajinomoto, Inc. (Tokyo, Japan) as a complainant. 71 FR 43209 (July 31, 2006).

On October 15, 2007, the Commission determined not to review an order of the ALJ, granting Ajinomoto’s motion to withdraw claims 1, 2, and 22 of the ‘160 patent and claims 13, 16–19, and 21–22 of the ‘698 patent.

On July 31, 2008, the ALJ issued his final ID, in which he found no violation of section 337 with regard to either the ‘160 or the ‘698 patents because he found that the asserted claims of both patents were invalid for failure to satisfy the best mode requirement of 35 U.S.C. 112 ¶ 1 on two separate grounds and that both patents were unenforceable because of inequitable conduct. He found infringement of the asserted claims through importation of lysine made using the “old” strain of *E. coli* by GBT, but not the “new” strain, based upon the stipulation of the parties. The ALJ also found the existence of a domestic industry for the asserted claims, and found that the asserted claims were not invalid for obviousness or obviousness-type double patenting, and that the asserted patents were not unenforceable by reason of unclean hands.

On August 19, 2008, Ajinomoto petitioned for review of the ALJ’s final ID regarding invalidity of the asserted claims for failure to meet the best mode requirement and unenforceability of the patents because of inequitable conduct. Neither GBT nor the Commission investigative attorney petitioned for review of any part of the ID.

Having examined the relevant portions of the record in this investigation, including the final ID, the

petition for review, and the responses thereto, the Commission has determined (1) to review and take no position on (a) the ALJ’s finding that claim 15 of the ‘160 patent is invalid for failure to meet the best mode requirement to the extent that finding is based on alleged fictitious data and (b) the ALJ’s finding that the ‘160 patent is unenforceable for inequitable conduct and (2) not to review the remainder of the ID. Thus, the investigation is terminated with a finding of no violation of section 337.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 of the Commission’s Rules of Practice and Procedure (19 CFR 210.42–.46).

By order of the Commission.

Issued: September 29, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–23377 Filed 10–2–08; 8:45 am]

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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1123 (Final)]

### Steel Wire Garment Hangers From China Determination

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of steel wire garment hangers, provided for in subheading 7326.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

#### Background

The Commission instituted this investigation effective July 31, 2007, following receipt of a petition filed with the Commission and Commerce by M&B Metal Products Company, Inc., Leeds, AL. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of steel wire garment hangers from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

the scheduling of the final phase of the Commission’s investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 4, 2008 (73 FR 18560). The hearing was held in Washington, DC, on July 31, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 29, 2008. The views of the Commission are contained in USITC Publication 4034 (September 2008), entitled *Steel Wire Garment Hangers from China: Investigation No. 731–TA–1123 (Final)*.

By order of the Commission.

Issued: September 29, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 5, 2008, a proposed Consent Decree in the case of *United States and the Commonwealth of Pennsylvania Department of Environmental Protection v. Temrac Company, Inc.*, Docket No. 08–4292, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this proceeding, the United States filed a claim pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. 9607, for reimbursement of costs incurred in connection with response actions taken at the Crossley Farms Superfund Site, located in Huffs Church, Hereford Township, Berks County, Pennsylvania. Pursuant to the Consent Decree, the settling Defendant agrees to pay \$1,916,448.77 in reimbursement of costs previously incurred by the United States, and \$212,938.93 in reimbursement of costs previously incurred by the Commonwealth of Pennsylvania.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication,

comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov), or mailed to: P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044-7611, and should refer to: *U.S. v. Temrac Company, Inc.*, DJ. Ref. 90-11-2-07484/3.

The Consent Decree may be examined at U.S. EPA Region III, Office of Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103-2029, c/o Gail Wilson, Esq. During the public comment period, the Consent Decree may also be examined at the following Department of Justice Web site:

[http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$5.25 (25 cents per page reproduction cost), or \$ 6.50 for the Consent Decree and the attached exhibits, payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Robert Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket Nos. 05-13 and 05-45]

### Sunny Wholesale, Inc.; Revocation of Registration and Denial of Application

On August 24, 2005, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Sunny Wholesale, Inc. (Respondent), of Forest Park, Georgia. ALJ Ex. 6. The Order immediately suspended Respondent's DEA Certificate of Registration, No. 004550SLY, which authorizes it to distribute the list I chemicals ephedrine and pseudoephedrine, on the ground that it was selling "excessive amounts"

of these chemicals to convenience stores, *id.* at 6, which are the "primary source" for the diversion of these chemicals into the illicit manufacture of methamphetamine, a schedule II controlled substance.<sup>1</sup> *Id.* at 4.

More specifically, the Show Cause Order alleged that in July 2005, DEA Diversion Investigators (DIs) learned that records seized from various north Georgia convenience stores which were "suspected of illegally distributing listed chemical precursors," had "indicated that [Respondent] had been distributing 60 count bottles of" Max Brand pseudoephedrine, a product which has been repeatedly found at illicit methamphetamine labs "in full case and double case lots." *Id.* at 6. The Show Cause Order alleged that "law enforcement officials [in Tennessee and Georgia] have observed that an overwhelming proportion of precursors found at illicit methamphetamine sites has involved non-traditional brands sold through convenience stores," *id.* at 4, that DEA had retained an expert in retail marketing and statistics who had concluded that sales of pseudoephedrine products at convenience stores in Tennessee and Georgia "averaged between \$15.00 and \$60.00 per month" per store and that sales of combination ephedrine products were even lower, *id.* at 5, and that "[c]onvenience store purchases of case quantities of high count/high strength pseudoephedrine products [are] consistent with diversion of the products into the illicit manufacture of methamphetamine." *Id.* at 6. The Show Cause Order further alleged that Respondent had continued selling large amounts of pseudoephedrine "to convenience stores and gas stations," notwithstanding that it had been "put on notice of the potential illegal character of its activities with the issuance of the original Order to Show Cause" which was served in October 2004. *Id.* "[B]ecause of the substantial likelihood that [Respondent would] continue to divert listed chemical products," I thus concluded that Respondent's "continued registration, during the pendency of these proceedings, would constitute an

<sup>1</sup> On October 20, 2004, the Deputy Assistant Administrator issued the initial Order to Show Cause to Respondent; the Order proposed the revocation of its registration at its Forest Park location and the denial of its pending application for a registration at its Decatur, Georgia location. ALJ Ex. 1. Each of the allegations of the initial Show Cause Order was repeated verbatim in the subsequent Order to Show Cause and Immediate Suspension of Registration. On November 19, 2004, Respondent, through its counsel, requested a hearing on the allegations of the first Show Cause Order. ALJ Ex. 2.

immediate danger to the public health and safety." *Id.* at 7.<sup>2</sup>

In addition to the above, the Show Cause Order alleged that during a July 2001 inspection, DEA DIs audited Respondent's handling of listed chemical products and determined that it had "various overages and shortages, including an unexplained shortage of approximately 10,000 bottles of Max Brand, and (another non-traditional brand) *Heads Up* 60 count bottles." *Id.* at 5. The Show Cause Order alleged that while inventorying Respondent's listed chemical products, it had "no traditional brand \* \* \* products but only 'grey market' brands of pseudoephedrine and combination ephedrine products" which are not sold at drug stores or supermarkets, but "are typically only sold in locations where goods of these types are not expected to be sold, such as liquor stores, head shops, gas stations, and other small retail stores." *Id.*

The Show Cause Order further alleged that following the inspection, DEA DIs conducted verifications of Respondent's customers; the DIs allegedly found that some of the locations were "non-existent," some were residences, and others included such establishments as "liquor stores, gift shops, a Blimpie restaurant \* \* \* and a magazine store." *Id.* Relatedly, the Order alleged that in seeking a registration for its Decatur location, Respondent provided a list of its proposed list I chemical customers which included "liquor stores, a lotto store, a clothing store, a newsstand, and another distributor." *Id.* at 3.

The Show Cause Order also alleged that Respondent would not maintain proper security of listed chemical products at its new proposed location because while its owner, Mr. Shaukat Sayani, had represented that his customers would place their orders "in person" and that Respondent would deliver the products by van, the DIs had previously determined that Respondent did not conduct business in this "manner at [its] Forest Park" location. *Id.* The Show Cause Order further alleged that Respondent "intended to co-mingle listed chemical products with

<sup>2</sup> The Order also alleged that in July 2005, DEA DIs discovered that Respondent "was also selling one-ounce bottles of liquid iodine to several convenience stores," another chemical used in the illicit manufacture of methamphetamine. Show Cause Order at 6. The Order further alleged that "[i]odine \* \* \* has miniscule sales for use as an antiseptic, even in pharmacies," that "[t]he likelihood of sales of iodine to customers in convenience stores approaches zero," and that while Respondent "sold between 48 and as many as 240 bottles of iodine to individual convenience stores," it "never reported these transactions \* \* \* as extraordinary sales or suspicious transactions." *Id.*