

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO  
2022 JUN 7 3:35 PM

In re: )  
 )  
Strong U.S. Trading 33, Inc., ) AHPA Docket No. 21-J-0039  
 )  
Respondent. )

**DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT**

Appearance:

*Thomas N. Bolick, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Administrator of the Animal and Plant Health Inspection Service (“APHIS”)*

**Preliminary Statement**

This is a proceeding under the Animal Health Protection Act, as amended (7 U.S.C. §§ 8301 *et seq.*) (“AHPA”); the regulations promulgated thereunder (9 C.F.R. Part 94); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) (“Rules of Practice”).

The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (“Complainant”), initiated this proceeding by filing a complaint against Strong U.S. Trading 33, Inc. (“Respondent”) on June 9, 2021. The Complaint alleges that Respondent violated the AHPA and Regulations on two instances in 2017<sup>1</sup> and requests:

1. That *unless respondent fails to file an answer within the prescribed time*, or files an answer admitting all the material allegations of the complaint, or enters into a consent decision as provided in section 1.138 of the Rules of Practice (7 C.F.R. § 1.138), this proceeding be set down for oral hearing in conformity with the rules of practice; and
2. That an order be issued against respondent assessing civil penalties against respondent in accordance with the Act and as warranted by the facts and circumstances of this case.

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<sup>1</sup> See Complaint at 1-3.

Complaint at 3 (emphasis added).

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).<sup>2</sup>

On July 20, 2021, Complainant filed a proposed default decision and order (“Proposed Decision”) and motion for adoption thereof (“Motion for Default”).<sup>3</sup> Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.<sup>4</sup>

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision.<sup>5</sup> Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of

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<sup>2</sup> United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on June 21, 2021. Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent’s answer was due on or before July 12, 2021. Respondent has not filed an answer.

<sup>3</sup> Complainant now requests that Respondent be assessed a civil penalty of \$10,000.00. *See* Motion for Default at 4; Proposed Decision at 4.

<sup>4</sup> United States Postal Service records reflect that Complainant’s Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on April 4, 2022. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent’s objections were due on or before April 25, 2022. Respondent has not filed any objections.

<sup>5</sup> 7 C.F.R. § 1.136(c).

an unfiled answer where, as in the present case, no meritorious objections have been filed.<sup>6</sup>

As Respondent failed to file an answer to the Complaint, and upon Complainant's motion for the issuance of a decision without hearing, this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

### **Findings of Fact**

1. Respondent U.S. Trading 33, Inc. operates a warehouse located at 140 Morgan Avenue, Brooklyn, New York 11237 but maintains a mailing address of 1144 60<sup>th</sup> Street, Brooklyn, New York 11219 for the purpose of service of process.
2. On or about April 24, 2017, Respondent imported container # BMOU4525600 from China into Port Elizabeth, New Jersey. The bill of lading for this container, B/L No. PRIMTF2017032233A; the packing list; a commercial invoice; and a U.S. Department of Homeland Security, Customs and Border Protection ("CBP") Form 3461, Entry/Immediate Delivery, listed the container's contents as "noodle, candy, boiled peanut." CBP Specialists placed the shipment on hold, transferred it to the East Coast Warehouse in Port Elizabeth, and inspected it there on May 4, 2017. The CBP Specialists found that the shipment contained, among other things, thirty-three boxes of cooked chicken feet and fourteen boxes of cooked chicken wings. The poultry products were unaccompanied by a certificate from a full-time, salaried veterinarian of the government agency responsible for animal health where this shipment originated certifying that these products were cooked throughout to reach a

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<sup>6</sup> See *supra* note 4 and accompanying text.

minimum internal temperature of seventy-four degrees Celsius (165 degrees Fahrenheit), in violation of AHPA section 8303 (7 U.S.C. § 8303) and section 94.6(b)(4) of the Regulations (9 C.F.R. § 94.6(b)(4)).

3. On or about May 10, 2017, Respondent imported container #TCLU9783435 from China into Port Elizabeth, New Jersey. A screen shot from the CBP Agriculture Port 4601 Cargo Management System and a CBP Form 3461, Entry/Immediate Delivery, listed the container's contents as "noodle, candy, boiled peanut. CBP Specialists placed the shipment on hold, transferred it to the East Coast Warehouse in Port Elizabeth, and inspected it there on May 23, 2017. The CBP Specialists found that the shipment contained, among other things, 208 cartons of noodle soup. Eight cartons of the soup were sampled and sent to a CBP laboratory for analysis, which found that two of the eight soup samples contained poultry products. The soups were unaccompanied by a certificate from a full-time, salaried veterinarian of the government agency responsible for animal health where the shipment originated certifying that these soups were cooked throughout to reach a minimum internal temperature of seventy-four degrees Celsius (165 degrees Fahrenheit), in violation of AHPA section 8303 (7 U.S.C. § 8303) and section 94.6(b)(4) of the Regulations (9 C.F.R. § 94.6(b)(4)).

### **Conclusions**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the Findings of Fact set forth above, Respondent Strong U.S. Trading 33, Inc. violated the Animal Health Protection Act (7 U.S.C. §§ 8301 *et seq.*) ("AHPA"). Therefore, the following Order is issued.

## ORDER

1. Complainant's Motion for Default is GRANTED.
2. Respondent Strong U.S. Trading 33, Inc. is hereby assessed a civil penalty of ten-thousand dollars (\$10,000.00). Respondent shall send a certified check or money order for ten-thousand dollars (\$10,000.00), made payable to the U.S. Department of Agriculture, to USDA-APHIS-GENERAL (AHPA Docket No. 21-J-0039), P.O. Box 979043, St. Louis, Missouri 63197-9000 within thirty (30) day from the effective date of this Order. Respondent shall indicate on the certified check or money order that this payment is in reference to AHPA Docket No. 21-J-0039.

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service, unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk.

Done at Washington, D.C.,  
this 7th day of June 2022

**CHANNING  
STROTHER** Digitally signed by  
CHANNING STROTHER  
Date: 2022.06.07 15:00:16  
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Channing D. Strother  
Chief Administrative Law Judge

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