

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P.Q. Docket No. 04-0001
	)	
Stephen Ludlum	)	
d/b/a The Orchid Factory Dot Com, Inc.,	)	
	)	CONSENT DECISION
Respondent	)	AND ORDER

This proceeding was instituted by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service alleging that the respondent violated the Plant Protection Act (7 U.S.C. § 7701 et seq.) (Act), and regulations promulgated thereunder (7 C.F.R. §§ 319 et seq. and 330.200). The parties have agreed that this proceeding should be terminated by entry of this Consent Decision.

STIPULATIONS

1. For the purposes of this stipulation and the provisions of this Consent Decision only, the parties agree, and respondent specifically admits, that the Secretary of the United States Department of Agriculture has jurisdiction in this matter. The parties neither admit nor deny the validity of the remaining allegations in the complaint, and admit that the Findings of Fact set forth below are consistent with actual events.

## WAIVER

1. For purposes of this Consent Decision only, the Respondent agrees to waive:
  - (a) Any further procedure;
  - (b) Any requirement that the final decision in this proceeding contain findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof;
  - (c) All rights to seek judicial review and otherwise challenge or contest the validity of this decision;
  - (d) Any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by the respondent in connection with this proceeding.
  
2. For purposes of this Consent Decision and Order only, the Complainant agrees to waive:
  - (a) Any further procedure or action against the respondent for claims relating to, or liabilities arising from, the Complaint filed in this matter, or any allegations contained therein.

## AGREEMENT

1. Respondent, on behalf of himself and his respective heirs, successors and assigns, hereby releases and forever discharges the United States Department of Agriculture, and each and every current or former officer or employee of the United States Department of Agriculture who may have engaged in any conduct complained of in this action, for any and all claims, obligations, demands and liabilities whatsoever, in law or equity, which Respondent had, now has or may have, or which in the future may arise from or as a result of, or in connection with, or

for any matter, cause, event, transaction, relation, or anything whatsoever, whether known or unknown, or whether or not presently asserted, as a result of, or in connection with, any matter(s) or event(s) referred to in the allegation of facts filed in the Complaint to this action, or related to this action in any way. The Respondent has considered and is aware of the possibility that he may not fully know the number and/or magnitude of each and every claim which he/it has or may have against the United States Department of Agriculture or other officers or employees of USDA as a result of or in connection with the matters referred to in this action, and nevertheless Respondent agrees that this Consent Decision and Order is a full and final release of any and all such claims against the United States Department of Agriculture and the afore-described United States Department of Agriculture officers and employees;

2. Respondent hereby agrees to waive his right to apply for, and/or obtain, any and all permits issued by the Animal and Plant Health Inspection Service for the importation of any plant, plant part(s), for or capable of propagation, including tree(s), tissue culture(s), plantlet(s), plantlet culture(s), pollen, shrub(s), vine(s), cutting(s), graft(s), scion(s), bud(s), bulb(s), root(s) and seed(s), for a period of 20 years, as otherwise authorized under Section 412 of the Plant Protection Act (7 U.S.C. § 7712; rules promulgated under Title 7 of the Code of Federal Regulations, Chapter III, subtitle B).

3. Complainant hereby agrees to deny any and all permits issued by the Animal and Plant Health Inspection Service to the Respondent, for the importation of any plant, plant part(s), for or capable of propagation, including tree(s), tissue culture(s), plantlet(s), plantlet culture(s), pollen, shrub(s), vine(s), cutting(s), graft(s), scion(s), bud(s), bulb(s), root(s) and seed(s), for a

period of 20 (twenty) years, as otherwise authorized under Section 412 of the Plant Protection Act (7 U.S.C. § 7712; rules promulgated under Title 7 of the Code of Federal Regulations, Chapter III, subtitle B).

#### FINDINGS OF FACT

1. Stephen Ludlum, hereinafter referred to as respondent, is an individual that was doing business as The Orchid Factory Dot Com, Inc., located at 37 Bridge Street, Brooklyn, New York 11215 with a mailing address of P.O. Box 150026, Brooklyn, New York 11215-0026.

2. On or about February 28, 2001, the respondent imported into the United States approximately thirty-eight (38) orchids from Ecuador.

3. On or about March 1, 2001, the respondent's thirty-eight orchids from Ecuador were subsequently taken into the possession, custody and control of the Animal and Plant Health Inspection Services of the United States Department of Agriculture for inspection purposes.

#### CONCLUSIONS


The respondent having admitted the jurisdictional facts and having agreed to the provisions set forth in the Consent Decision and Order in disposition of this proceeding such Order and Decision will be issued.

ORDER

The respondent, Stephen Ludlum, dba The Orchid Factory Dot Com, Inc., shall be prohibited from, for a period of twenty (20) years, applying for, and/or obtaining any and all USDA, APHIS permits for the importation of plants, as defined in this Consent Decision and Order, into the United States, as otherwise authorized under the Plant Protection Act, 7 U.S.C. §§ 7701 et seq.


All judicial procedures by and between the Respondent and the Complainant arising from the Complaint filed in this action or any allegations contained therein are hereby ended and terminated.

This Order shall become effective on the day upon which service of this Order is signed by the Administrative Law Judge, Judge Jill S. Clifton.

  
STEPHEN LUDLUM, dba Orchid Factory Dot Com  
Respondent

  
MARGARET A. BURNS RATH  
Attorney for Complainant

Issued this 9 day of May, 2005  
at Washington, D.C.

  
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Jill S. Clifton  
Administrative Law Judge.