

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO'  
2021 OCT 19 4:13 PM'

In re: )  
)  
Ni Xiu Hua, an individual d/b/a ) AHPA/PPA Docket No. 21-J-0056  
Tongle Fashion, Inc.; and )  
Tongle Fashion, Inc., a State of New York ) AHPA/PPA Docket No. 21-J-0057  
domestic business corporation, )  
)  
Respondents. )

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

Appearance:

*John V. Rodriguez, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, Kevin Shea, Administrator, 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.*), and the regulations promulgated thereunder (9 C.F.R. Part 94); the Plant Protection Act, as amended (7 U.S.C. §§ 7701 *et seq.*), and the regulations promulgated thereunder (9 C.F.R. Parts 319, 327, 360, and 361); 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 Ni Xiu Hua and Tongle Fashion, Inc. on August 11, 2021. The Complaint alleges that Respondents imported into the United States seeds, plants, pork, and poultry from China without the requisite certificates, permits, or markings.<sup>1</sup> The Complaint also requests “that this matter

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<sup>1</sup> See Complaint at 2-4.

proceed expeditiously in conformity with the Rules of Practice governing proceedings under the Act; and that such order or orders be issued as are authorized by the Act (7 U.S.C. § 2149) and warranted under the circumstances.”<sup>2</sup>

Respondents were 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>3</sup>

On September 15, 2021, Complainant filed a proposed default decision and order (“Proposed Decision”) and motion for adoption thereof (“Motion for Default”) pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Respondents have 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

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<sup>2</sup> *Id.* at 4.

<sup>3</sup> United States Postal Service records reflect that the Complaint was sent to Respondents via certified mail and delivered on August 18, 2021. Respondents 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, Respondents’ answer was due on or before September 7, 2021. Respondents have not filed an answer.

<sup>4</sup> United States Postal Service records reflect that Complainant’s Motion for Default and Proposed Decision were sent to Respondents via certified mail and delivered on September 21, 2021. Respondents 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, Respondents’ objections were due on or before October 12, 2021. Respondents have not filed any objections.

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

As Respondents 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 Ni Xiu Hua is an individual doing business as Tongle Fashion, Inc. Respondent Ni Xiu Hua's address was not provided in the Complaint to protect Respondent Ni Xiu Hua's personal privacy but was provided to the Hearing Clerk, United States Department of Agriculture, for purposes of service of the Complaint and future documents.
2. Respondent Tongle Fashion, Inc. is a registered domestic business corporation organized under the laws of the State of New York and has a business address of 5109 8th Avenue, Brooklyn, NY 11220.
3. At all times herein Respondent Ni Xiu Hua was an individual doing business as Respondent Tongle Fashion, Inc.
4. On or about January 23, 2019, APHIS conducted a survey at Respondent Tongle Fashion, Inc.'s business address and discovered the following:

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<sup>5</sup> 7 C.F.R. § 1.136(c).

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

- a. Respondents imported into the United States approximately .1 kg of *Cucurbita sp.* seeds, from China, without the required phytosanitary certificate, in violation of 7 C.F.R. § 319.37-6(a).
- b. Respondents imported into the United States approximately .59 kg of *Brassica sp.* seeds, from China, without the required phytosanitary certificate, in violation of 7 C.F.R. § 319.37-6(a).
- c. Respondents imported into the United States approximately .74 kg of *Ipomoea aquatica Forsskal (Convolvulaceae)* seeds, from China, without the required phytosanitary certificate, in violation of 7 C.F.R. § 319.37-6(a).
- d. Respondents imported into the United States approximately .1 kg of *Cucurbita sp.* from China, by mail, without being correctly addressed and mailed to an authorized port of entry and without the appropriate markings, in violation of 7 C.F.R. § 319.37-7(b).
- e. Respondents imported into the United States approximately .59 kg of *Brassica sp.* seeds, from China, by mail, without being correctly addressed and mailed to an authorized port of entry and without the appropriate markings, in violation of 7 C.F.R. § 319.37-7(b).
- f. Respondents imported into the United States approximately .74 kg of *Ipomoea aquatica Forsskal (Convolvulaceae)* seeds, from China, by mail, without being correctly addressed and mailed to an authorized port of entry and without the appropriate markings, in violation of 7 C.F.R. § 319.37-7(b).

- g. Respondents imported into the United States approximately .74 kg of *Ipomoea aquatica* Forsskal (*Convolvulaceae*) seeds, from China, without the required Federal Noxious Weed permit, in violation of 7 C.F.R. § 360.300.
- h. Respondents imported into the United States approximately 2.42 kg of pork or pork products from China, a region where APHIS considers foot-and-mouth disease to exist, without the requisite foreign meat inspection certificate, in violation of 9 C.F.R. §§ 94.4(a)(4) and 327.4.
- i. Respondents imported into the United States approximately 25.42 kg of poultry or poultry products from China, a region where APHIS considers Newcastle disease and/or highly pathogenic avian influenza (HPAI) to exist, without the requisite veterinary officer inspection certificate, in violation of 9 C.F.R. § 94.6(b)(4).
- j. Respondents imported into the United States approximately 2.42 kg of pork or pork product from China, a region where APHIS considers African swine fever to exist or is reasonably believed to exist, without the requisite foreign meat inspection certificate, in violation of 9 C.F.R. §§ 94.8(b)(3) and 327.4.
- k. Respondents imported into the United States approximately 2.42 kg of pork or pork product from China, a region where APHIS considers classical swine fever to exist, without the requisite foreign meat inspection certificate, in violation of 9 C.F.R. §§ 94.9(c)(3) and 327.4
- l. Respondents imported into the United States approximately 2.42 kg of pork or pork product from China, a region where APHIS considers swine vesicular disease to exist,

without the requisite foreign meat inspection certificate, in violation of 9 C.F.R. §§ 94.12(b)(3) and 327.4.

### **Conclusions**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the Findings of Fact set forth above, Respondents Ni Xiu Hua and Tongle Fashion, Inc. violated the Plant Protection Act, as amended (7 U.S.C. §§ 7701 *et seq.*), and the regulations promulgated thereunder (7 C.F.R. Parts 319, 327, 360, and 361) seven times and violated the Animal Health Protection Act, as amended (7 U.S.C. §§ 8301 *et seq.*), and the regulations promulgated thereunder (9 C.F.R. Part 94) five times. Therefore, the following Order shall be entered.

### **ORDER**

1. Complainant's Motion for Decision Without Hearing is GRANTED.
2. A finding is made that Respondents Ni Xiu Hua and Tongle Fashion, Inc. violated the Plant Protection Act, as amended (7 U.S.C. §§ 7701 *et seq.*), and the regulations promulgated thereunder (7 C.F.R. Parts 319, 327, 360, 361) seven times and violated the Animal Health Protection Act, as amended (7 U.S.C. §§ 8301 *et seq.*), and the regulations promulgated thereunder (9 C.F.R. Part 94) five times. Specifically, at all times herein Respondent Ni Xiu Hua was an individual doing business as Respondent Tongle Fashion, Inc. And on or about January 23, 2019, APHIS conducted a survey at Respondent Tongle Fashion, Inc.'s business address and discovered the following:

- a. Respondents imported into the United States approximately .1 kg of *Cucurbita sp.* seeds, from China, without the required phytosanitary certificate, in violation of 7 C.F.R. § 319.37-6(a).
- b. Respondents imported into the United States approximately .59 kg of *Brassica sp.* seeds, from China, without the required phytosanitary certificate, in violation of 7 C.F.R. § 319.37-6(a).
- c. Respondents imported into the United States approximately .74 kg of *Ipomoea aquatica Forsskal (Convolvulaceae)* seeds, from China, without the required phytosanitary certificate, in violation of 7 C.F.R. § 319.37-6(a).
- d. Respondents imported into the United States approximately .1 kg of *Cucurbita sp.* from China, by mail, without being correctly addressed and mailed to an authorized port of entry and without the appropriate markings, in violation of 7 C.F.R. § 319.37-7(b).
- e. Respondents imported into the United States approximately .59 kg of *Brassica sp.* seeds, from China, by mail, without being correctly addressed and mailed to an authorized port of entry and without the appropriate markings, in violation of 7 C.F.R. § 319.37-7(b).
- f. Respondents imported into the United States approximately .74 kg of *Ipomoea aquatica Forsskal (Convolvulaceae)* seeds, from China, by mail, without being correctly addressed and mailed to an authorized port of entry and without the appropriate markings, in violation of 7 C.F.R. § 319.37-7(b).

- g. Respondents imported into the United States approximately .74 kg of *Ipomoea aquatica* Forsskal (*Convolvulaceae*) seeds, from China, without the required Federal Noxious Weed permit, in violation of 7 C.F.R. § 360.300.
- h. Respondents imported into the United States approximately 2.42 kg of pork or pork products from China, a region where APHIS considers foot-and-mouth disease to exist, without the requisite foreign meat inspection certificate, in violation of 9 C.F.R. §§ 94.4(a)(4) and 327.4.
- i. Respondents imported into the United States approximately 25.42 kg of poultry or poultry products from China, a region where APHIS considers Newcastle disease and/or highly pathogenic avian influenza (HPAI) to exist, without the requisite veterinary officer inspection certificate, in violation of 9 C.F.R. § 94.6(b)(4).
- j. Respondents imported into the United States approximately 2.42 kg of pork or pork product from China, a region where APHIS considers African swine fever to exist or is reasonably believed to exist, without the requisite foreign meat inspection certificate, in violation of 9 C.F.R. §§ 94.8(b)(3) and 327.4.
- k. Respondents imported into the United States approximately 2.42 kg of pork or pork product from China, a region where APHIS considers classical swine fever to exist, without the requisite foreign meat inspection certificate, in violation of 9 C.F.R. §§ 94.9(c)(3) and 327.4
- l. Respondents imported into the United States approximately 2.42 kg of pork or pork product from China, a region where APHIS considers swine vesicular disease to exist,



without the requisite foreign meat inspection certificate, in violation of 9 C.F.R. §§ 94.12(b)(3) and 327.4.

3. Respondents are hereby assessed a total of twelve-thousand, five-hundred dollars (\$12,500) for the PPA violations and six-thousand, two-hundred and fifty dollars (\$6,250) for the AHPA violations in civil penalties.
4. Respondents shall send a certified check or money order for eighteen-thousand, seven-hundred and fifty dollars (\$18,750), made payable to the U.S. Department of Agriculture, to USDA APHIS, P.O. Box 979043, St. Louis, Missouri 63197-9000 within thirty (30) days from the effective date of this Order. Respondents shall indicate on the certified check or money order that this payment is in reference to AHPA/PPA Docket No. 21-J-0056 and/or AHPA/PPA Docket No. 21-J-0057.

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 19th day of October 2021

**CHANNING  
STROTHER**

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Date: 2021.10.19 15:57:26  
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Channing D. Strother  
Chief Administrative Law Judge

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