

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

In the Matter of

**CERTAIN RAISED GARDEN BEDS
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1334

**NOTICE OF A COMMISSION DETERMINATION FINDING A VIOLATION OF
SECTION 337; ISSUANCE OF A LIMITED EXCLUSION ORDER AND CEASE AND
DESIST ORDER; TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has found a violation of section 337 in the above-captioned investigation. The Commission has determined to issue a limited exclusion order (“LEO”) prohibiting the importation into the United States and the sale of certain raised garden beds and components thereof by respondents Huizhou Green Giant Technology Co., Ltd. (“Green Giant”) of Guangdong, China; and Utopban Limited (“Utopban”) of Hong Kong, China. The Commission has also determined to issue a cease and desist order (“CDO”) directed to respondent Utopban. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Edward S. Jou, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3316. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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: The Commission instituted this investigation on October 19, 2022, based on an amended complaint (the “Complaint”) filed by Vego Garden, Inc. of Houston, Texas (the “Complainant” or “Vego Garden”). 87 FR 63527-28 (Oct. 19, 2022). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based upon the importation into the United States, and in the sale of, certain raised garden beds and components thereof by reason of misappropriation of trade secrets and unfair competition, the threat or effect of which is to destroy or substantially injure a domestic industry. *Id.* at 63527.

The Commission’s notice of investigation named five respondents, and the name of one of the respondents was corrected pursuant to an amendment to the complaint. *See* 88 FR 2637-38 (Jan. 17, 2023). The five named respondents, as amended, are: Huizhou Green Giant Technology Co., Ltd. (“Green Giant”) of Guangdong, China; Utopban International Trading Co., Ltd. d/b/a Vegega (“Utopban International”) of Rosemead, California; Utopban Limited (“Utopban”) of Hong Kong, China; Forever Garden of El Monte, California; and VegHerb, LLC d/b/a Frame It All (“VegHerb”) of Cary, North Carolina. *See id.* at 2638. The Office of Unfair Import Investigations (“OUII”) is also a party in this investigation. *Id.*

The investigation was terminated as to Utopban International based on withdrawal of the complaint’s allegations. Order No. 9 (Jan. 30, 2023), *unreviewed by* Comm’n Notice (Feb. 27, 2023). The investigation was terminated as to Forever Garden and VegHerb based on settlement agreements. Order No. 11 (Feb. 23, 2023) (VegHerb) and Order No. 12 (Feb. 23, 2023) (Forever Garden), *both unreviewed by* Comm’n Notice (Mar. 23, 2023).

An evidentiary hearing was held on May 22-25, 2023, and the ALJ issued a final initial determination (“ID”) on September 8, 2023, finding a violation of section 337 by reason of misappropriation of trade secrets and unfair competition based on false advertising under the Lanham Act. Together with the ID, the ALJ also issued a recommended determination (“RD”) recommending the issuance of an LEO for Green Giant and Utopban and a CDO for Utopban. The RD further recommended that a 100% bond be set during the Presidential review period.

On September 12, 2023, the Commission issued a notice requesting submissions on the public interest. *See* 88 FR 63617-18 (Sept. 15, 2023). On October 10, 2023, Vego Garden filed a statement on the public interest. No other public interest submissions were filed.

Respondents Green Giant and Utopban filed a petition for review of the ID on September 20, 2023. Complainant Vego Garden filed a response in opposition to the petition on September 28, 2023. OUII filed a response in opposition to the petition on October 2, 2023.

On November 7, 2023, the Commission extended the date for determining whether to review the ID from November 9, 2023, to January 9, 2024, and the Commission extended the target date for completion of this investigation from January 8, 2024, to March 11, 2024. *See* Comm’n Notice (Nov. 7, 2023).

On January 9, 2024, the Commission issued a notice of its determination to review the ID in part. *See* 89 FR 2645-47 (Jan. 16, 2024). Specifically, the Commission determined to review the ID’s findings with respect to: (1) the Commission’s statutory authority to investigate unfair acts under section 337(a)(1)(A) involving extraterritorial conduct, including the alleged trade secret misappropriation and false advertising under the Lanham Act; (2) the ID’s findings of trade secret misappropriation with respect to the Product Development Research Trade Secret and Product Manufacturing Trade Secret; and (3) all of the ID’s findings with respect to domestic industry (*i.e.*, the existence of a domestic industry and injury to the domestic industry) (ID at 103-136). *Id.* at 2646. The Commission determined not to review the ID’s determinations with respect to the Product Materials Research Trade Secret and the false advertising claim. The Commission also requested additional briefing from the parties with respect to certain issues under review and requested submissions from the parties, interested government agencies, and

any other interested parties on the issues of remedy, the public interest, and bonding. *Id.* at 2646-47.

On January 23, 2024, Complainant Vego Garden, Respondents Green Giant and Utopban, and OUII each filed submissions in response to the Commission's notice. On January 30, 2024, each of the parties filed reply submissions.

On February 28, 2024, the Commission extended the target date for completion of this investigation to March 18, 2024. *See* Comm'n Notice (Mar. 12, 2024). On March 15, 2024, the Commission extended the target date for completion of this investigation to March 21, 2024. *See* Comm'n Notice (Mar. 15, 2024).

Having examined the record in this investigation, including the ID, the RD, the petition for review and responses thereto, and the parties' submissions on review, the Commission has determined to affirm-in-part and reverse-in-part the ID. Specifically, as explained in the Commission Opinion issued concurrently herewith, the Commission has determined to affirm with modifications the ID's determination that the Commission has statutory authority to investigate the alleged unfair methods of competition and unfair acts; reverse the ID's determination that the Product Development Research Trade Secret was misappropriated; affirm with modifications the ID's determination that the Product Manufacturing Trade Secret was misappropriated; and affirm with modifications the ID's determination that the domestic industry requirement was satisfied. All findings in the ID that are not inconsistent with the Commission's determination are affirmed and adopted by the Commission. Accordingly, the Commission finds that there is a violation of section 337 by Respondents Green Giant and Utopban with respect to misappropriation of Vego Garden's Product Manufacturing Trade Secret; and by Utopban with respect to false advertising.

The Commission has determined that the appropriate form of relief is an LEO and a CDO. The LEO prohibits (1) the unlicensed entry of raised metal garden beds that are manufactured using Vego Garden's Product Manufacturing Trade Secret and are manufactured, imported, or sold by or on behalf of Green Giant and/or Utopban for a duration of one year; and (2) the unlicensed entry of raised metal garden beds that are falsely advertised using photographs of Vego Garden's products that are imported or sold by or on behalf of Utopban. The CDO prohibits (1) the unlicensed importation, sale, and marketing in the United States by Utopban of raised metal garden beds that are manufactured using Vego Garden's Product Manufacturing Trade Secret for a duration of one year; and (2) the unlicensed importation, sale, and marketing in the United States by Utopban of raised metal garden beds that are falsely advertised using photographs of Vego Garden's products.

The Commission has determined that the public interest factors enumerated in subsections (d)(1) and (f)(1) of section 337 do not preclude the issuance of the remedial orders. The Commission has further determined that the bond during the period of Presidential review pursuant to section 337(j) (19 U.S.C. 1337(j)) shall be set in the amount of one hundred percent (100%) of the entered value of the imported articles that are subject to the LEO. The Commission's remedial orders were delivered to the President and to the United States Trade Representative on the day of their issuance. The investigation is hereby terminated.

The Commission vote for this determination took place on March 21, 2024.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa Barton', enclosed within a large, stylized oval flourish.

Lisa Barton
Secretary to the Commission

Issued: March 21, 2024