

TON

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, :
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 Plaintiff, :
 :
 v. :
 :
 :
 KINGS MARKET, :
 :
 MS. YAN MEI ZHU, AND :
 :
 MR. BARRY LIU, :
 :
 Defendants. :

CIVIL ACTION NO. 09 4998

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, United States of America, by and through its attorneys, Michael L. Levy, United States Attorney for the Eastern District of Pennsylvania, and Stacey L. B. Smith, Assistant United States Attorney for the same district, files this Complaint and alleges as follows:

INTRODUCTION

1. This is a civil action brought by plaintiff, the United States of America, against defendants, Kings Market ("Kings"); Ms. Yan Mei Zhu ("Zhu"), owner of Kings, and Mr. Barry Liu ("Liu"), manager of Kings, seeking permanent injunctive relief for violations of the Federal Meat Inspection Act ("FMIA"), 21 U.S.C. § 601 et seq., and the Poultry Products Inspection Act ("PPIA"), 21 U.S.C. § 451 et seq.

2. On multiple occasions, defendants have violated the FMIA and PPIA by selling, transporting, offering for sale or transport, or receiving for transportation, in commerce, non-federally inspected, and misbranded, meat and poultry for human consumption. Defendants have also stored these food products under conditions that have caused them to become putrid, decomposed and otherwise adulterated.

3. Although defendants have admitted these repeated violations, and have agreed to

A TRUE COPY CERTIFIED FROM THE RECORD
DATED: 10-30-09
ATTEST: *Brian Costello*
DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

comply with the statutory requirements, they have failed to do so.

PARTIES

4. Plaintiff is the United States of America.

5. Defendant Kings Market is a sole proprietorship that does business as a retail food store with two locations at 140 & 145 North 10th Street, Philadelphia, PA 19107.

6. Defendant Ms. Yan Mei Zhu is the owner of Kings Market, and has been so since about 2004. Upon information and belief, Zhu shares full operational control of the Kings Market retail store with her husband, defendant Mr. Barry Liu.

7. Upon information and belief, defendant Mr. Barry Liu has been the manager of Kings Market since about 2004. Upon each visit by United States Department of Agriculture agents to Kings Market, Liu was present, went through the store with the agents, handled disposal of all adulterated or non-federally inspected products, and directed the work of other employees. Liu was also present whenever United States Department of Agriculture documents were signed and when all laws and regulations were explained.

8. Defendants are and have been engaging in the sale and transportation of, *inter alia*, meat and poultry, in interstate commerce.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this matter pursuant to 21 U.S.C. §§ 467c and 674 and 28 U.S.C. §§ 1331, 1337, and 1345.

10. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) because the actions giving rise to this action occurred in the Eastern District of Pennsylvania, and because defendants transact business within this District.

REGULATORY SCHEME

11. As the Federal Meat Inspection Act ("FMIA"), 21 U.S.C. § 601 et seq., and the Poultry Products Inspection Act ("PPIA"), 21 U.S.C. § 451 et seq. provide, meat, meat food products, poultry, and poultry products, are an important source of the Nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that these foods distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged.

12. The FMIA and the PPIA prohibit any person, firm, or corporation from selling, transporting, offering for sale or transportation, or receiving for transportation, in commerce, any meat or meat food product, FMIA, 21 U.S.C. § 610(c)(2), or poultry or poultry product, PPIA, 21 U.S.C. § 458(a)(2)(B), required to be inspected by the United States Department of Agriculture ("USDA"), unless they have been so inspected and passed inspection.

13. Under the FMIA, meat and meat food products required to be inspected include the carcasses and parts of all cattle, sheep, swine, goats, horses, mules, or other equines, to be prepared at, brought into, or issued from any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, as articles of commerce which are capable of use as human food. FMIA, 21 U.S.C. §§ 603-606.

14. Under the PPIA, poultry and poultry products required to be inspected include the carcasses and parts of any domesticated bird processed by establishments for use in commerce as human food. PPIA, 21 U.S.C. § 455.

15. The FMIA and PPIA also prohibit any person, firm, or corporation from doing anything to any meat or meat food product, 21 U.S.C. § 610(d), or poultry or poultry product, 21 U.S.C. § 458(a)(3), while they are being transported in commerce or held for sale after such

transportation, which is intended to cause or has the effect of causing, such food products to be adulterated or misbranded.

16. These food products are “adulterated” if, among other things, they (1) consist in whole or in part of any filthy, putrid, or decomposed substance, or are for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food, or (2) have been prepared, packed, or held under insanitary conditions whereby they may have become contaminated with filth, or whereby they may have been rendered injurious to health. FMIA, 21 U.S.C. §§ 601(m)(3) & (4); PPIA, 21 U.S.C. §§ 453(g)(3) & (4).

17. These food products are “misbranded” if, among other things, they fail to bear, directly thereon or on their containers, the official inspection legend. FMIA, 21 U.S.C. § 601(n)(12); PPIA, 21 U.S.C. § 453(h)(12).

FACTUAL BACKGROUND

Defendants’ Recent Violations of the FMIA and the PPIA

18. On or about August 12, 2009, defendants violated the FMIA and PPIA by offering for sale, and selling, in commerce, approximately 248 pounds of various meat, meat food products, poultry and poultry products, including 200 pounds of whole ducks, 24 pounds of cooked beef tendon balls, 12 pounds of pork sung (dried pork), and 12 pounds of chicken dumplings, that were stored under insanitary conditions that caused the food products to become adulterated. (Exs. A1—A5, A9—A10, A12—A18, A20—A26 (photographs of Kings Market depicting insanitary freezer conditions, including flies, rodent droppings, and contaminated water dripping from the refrigeration unit); Ex. B, August 12, 2009 Shipper’s or Receiver’s Certification signed by defendant Zhu.)

19. None of the whole ducks bore the marks of federal inspection, and were therefore

misbranded. (Exs. A3—A5, A12—A16, A26 and B.)

20. The various meat, meat food products, poultry and poultry products, were also stored in above-freezing temperatures that caused the food products to become putrid, decomposed and otherwise unhealthful and unsound. (Exs. A6—A8, A12—A15, A17—A18, A20—A21, A23—A26 and B.)

21. In a Shipper's or Receiver's Certification dated August 12, 2009, Zhu acknowledged that Kings offered for sale approximately 248 pounds of meat and poultry products that were stored in insanitary conditions, and not fully frozen, including 200 pounds of duck products void of marks of federal inspection. She also stated that proper storage and labeling requirements were again explained to her. (Ex. B.)

22. During this visit by USDA agents, Liu was present and acting in a managerial role.

23. Earlier this year, on or about January 22, 2009, defendants violated the FMIA by transporting, offering for sale, and selling, in commerce, pork buns without the products first passing federal inspection as required by the FMIA.

24. In a statement dated January 22, 2009, Zhu acknowledged that Kings purchased pork buns without the marks of federal inspection, and offered for sale, and sold the pork buns on or about January 22, 2009. (Ex. C.)

25. During this visit by USDA agents, Liu was present and acting in a managerial role.

26. As is outlined below, defendants have an extensive history of violating the FMIA and the PPIA dating back to 2005. The USDA has extended the defendants numerous opportunities to voluntarily comply with the FMIA and PPIA in an effort to avoid utilizing the

Court's resources. The United States, however, now seeks the Court's assistance with enforcing the FMIA and PPIA against defendants because based on the defendants' continuing violations, it has become clear that unless enjoined, restrained, and prohibited from further violations of the FMIA and PPIA, defendants will continue to sell, transport, offer for sale or transport, or receive for transportation, in commerce, uninspected, misbranded, and adulterated meat, meat food products, poultry, and poultry products for human consumption.

Defendants' History of Violating the FMIA and the PPIA

March 2005 – Sale of Non-Federally Inspected Pork Buns

27. Defendants' first violation occurred on or about March 7, 2005, when they violated the FMIA by transporting, offering for sale, and selling, in commerce, pork buns without the products first passing federal inspection as required by the FMIA.

28. In a statement dated March 7, 2005, defendant Liu, who, upon information and belief is defendant Zhu's husband, acknowledged that Kings purchased, transported, offered for sale, and sold uninspected pork buns. (Ex. D1.)

29. Although Mr. Liu identified himself as the owner of Kings in the March 7, 2005 statement, during a later interview, he explained that his wife Zhu was the actual owner. Zhu affirmed this fact by signing a memorandum of interview dated August 19, 2005. (Ex. D2.)

30. During the March 7, 2005 visit by USDA agents, Liu was present and acting in a managerial role.

31. On April 21, 2005, the USDA issued a Notice of Warning to the defendants, advising them of the March 7, 2005 violation, setting forth the applicable requirements of the FMIA, and stating that future violations could result in legal action. (Ex. D3.)

July 2005 – Sale of Non-Federally Inspected Pork Buns

32. On or about July 29, 2005, defendants again violated the FMIA by transporting, offering for sale, and selling, in commerce, pork buns without the products first passing federal inspection as required by the FMIA.

33. In a Shipper's or Receiver's Certification dated July 30, 2005, defendant Zhu acknowledged that Kings purchased pork buns from an unknown vendor on or about July 29, 2005 that were void of the federal marks of inspection. She also acknowledged that the USDA investigator explained the inspection requirements to her and that she understood the requirements. (Ex. E1.)

34. During this visit by USDA agents, Liu was present and acting in a managerial role.

35. On September 19, 2005, the USDA issued a Notice of Warning to defendants, advising them of the July 29, 2005 violation, setting forth the applicable requirements of the FMIA, and stating that future violations could result in legal action. (Ex. E2.)

November 2005 – Sale of Non-Federally Inspected Pork Dumplings

36. On or about November 24, 2005, defendants violated the FMIA by transporting, offering for sale, and selling, in commerce, pork dumplings without the products first passing federal inspection as required by the FMIA.

37. In a Shipper's or Receiver's Certification dated November 28, 2005, Zhu acknowledged that Kings purchased uninspected pork dumplings, and offered for sale, and sold the pork dumplings on or about November 24, 2005. Ms. Zhu pledged not to sell any products in the future that do not come from a federal source. (Ex. F1.)

38. During this visit by USDA agents, Liu was present and acting in a managerial

role.

39. On December 12, 2005, the USDA issued a Notice of Warning to defendants, advising them of the November 24, 2005 violation, setting forth the applicable requirements of the FMIA, and stating that future violations could result in legal action. (Ex. F2.)

December 2005 – Sale of Non-Federally Inspected Duck Feet

40. On or about December 17, 2005 defendants violated the PPIA by transporting, offering for sale, and selling, in commerce, frozen duck feet required to be inspected under the PPIA, without the products first passing federal inspection.

41. In a Shipper's or Receiver's Certification dated December 17, 2005, Zhu acknowledged that she offered for sale uninspected frozen duck feet. (Ex. G1.)

42. During this visit by USDA agents, Liu was present and acting in a managerial role.

43. In a statement dated May 2, 2006, Zhu again admitted that on December 17, 2005, she purchased uninspected frozen duck feet and offered them for sale. In the May 2, 2006 statement, Zhu acknowledged that the investigator had explained the USDA regulations to her, and that she understood the inspection requirements. (Ex. G2.)

44. Zhu also affirmed in this statement that she had been the owner of Kings since about 2004. (Ex. G2.)

45. On August 29, 2006, the USDA issued a Notice of Alleged Violation to the defendants. The Notice of Alleged Violation informed Zhu that Kings repeatedly had been warned about violations of the FMIA, and that Kings had recently engaged in conduct that violated the PPIA. (Ex. G3.)

46. Although the Notice invited Zhu to present her views regarding the alleged

violations, she never responded.

47. The defendants' most recent 2009 violations, combined with their history of violations, evidence that unless enjoined, restrained, and prohibited from further violations of the FMIA and PPIA, defendants will continue to sell, transport, offer for sale or transport, or receive for transportation, in commerce, uninspected, misbranded, and adulterated meat, meat food products, poultry, and poultry products for human consumption.

FIRST CAUSE OF ACTION

August 12, 2009 Violation of the FMIA, 21 U.S.C. § 610(d)
(Adulterating Meat or Meat Food Products in Commerce)

48. The allegations in paragraphs 1 through 47 are re-alleged and incorporated by reference as though set forth fully herein.

49. On or about August 12, 2009, defendants violated the FMIA by storing and handling meat or meat food products, while they were being transported in commerce or held for sale after such transportation, in a manner that had the effect of causing such food products to be adulterated.

50. Unless enjoined, restrained, and prohibited from further violations of the FMIA, defendants will continue to store and handle meat or meat food products, while they are being transported in commerce or held for sale after such transportation, in a manner that has the effect of causing such food products to be adulterated.

SECOND CAUSE OF ACTION

August 12, 2009 Violation of the PPIA, 21 U.S.C. § 458(a)(3)
(Adulterating Poultry or Poultry Products in Commerce)

51. The allegations in paragraphs 1 through 50 are re-alleged and incorporated by reference as though set forth fully herein.

52. On or about August 12, 2009, defendants violated the PPIA by storing and handling poultry or poultry products, while they were being transported in commerce or held for sale after such transportation, in a manner that had the effect of causing such food products to be adulterated.

53. Unless enjoined, restrained, and prohibited from further violations of the PPIA, defendants will continue to store and handle poultry or poultry products, while they are being transported in commerce or held for sale after such transportation, in a manner that has the effect of causing such food products to be adulterated.

THIRD CAUSE OF ACTION

August 12, 2009 Violation of the PPIA, 21 U.S.C. § 458(a)(3)
(Misbranding Poultry or Poultry Products in Commerce)

54. The allegations in paragraphs 1 through 53 are re-alleged and incorporated by reference as though set forth fully herein.

55. On or about August 12, 2009, defendants violated the PPIA by causing poultry or poultry products, while they were being transported in commerce or held for sale after such transportation, to be misbranded.

56. Unless enjoined, restrained, and prohibited from further violations of the PPIA, defendants will continue to cause poultry or poultry products, while they are being transported in commerce or held for sale after such transportation, to be misbranded.

FOURTH CAUSE OF ACTION

January 22, 2009 Violation of the FMIA, 21 U.S.C. § 610(c)(2)
(Selling, Transporting, Offering for Sale or Transport, or Receiving for Transportation, in Commerce, Non-Federally Inspected Meat or Meat Food Products)

57. The allegations in paragraphs 1 through 56 are re-alleged and incorporated by

reference as though set forth fully herein.

58. On or about January 22, 2009, defendants violated the FMIA by selling, transporting, offering for sale or transport, or receiving for transportation, in commerce, meat or meat food products required to be inspected and passed by the USDA, without the products passing such inspection.

59. Unless enjoined, restrained, and prohibited from further violations of the FMIA, defendants will continue to sell, transport, offer for sale or transport, or receive for transportation, in commerce, non-federally inspected meat or meat food products.

FIFTH CAUSE OF ACTION

January 22, 2009 Violation of the FMIA, 21 U.S.C. § 610(d)
(Misbranding Meat or Meat Food Products in Commerce)

60. The allegations in paragraphs 1 through 59 are re-alleged and incorporated by reference as though set forth fully herein.

61. On or about January 22, 2009, defendants violated the FMIA by causing meat or meat food products, while they were being transported in commerce or held for sale after such transportation, to be misbranded.

62. Unless enjoined, restrained, and prohibited from further violations of the FMIA, defendants will continue to cause meat or meat food products, while they are being transported in commerce or held for sale after such transportation, to be misbranded.

PRAYER FOR RELIEF

WHEREFORE, plaintiff the United States of America requests that judgment be entered in its favor and against the defendants, and seeks entry of an order granting the following relief, along with such further relief as the Court may deem just and proper:

(a) a permanent injunction requiring and compelling defendants to comply in all pertinent particulars with the FMIA and PPIA, as well as the regulations promulgated there under;

(b) a permanent injunction enjoining and restraining defendants and their employees, agents, representatives, successors, and assigns, and any and all persons in active concert or participation with any or all of them, from directly or indirectly selling, transporting, offering for sale or transport, or receiving for transportation, in commerce, any meat, meat food product, poultry, or poultry product required to be inspected and passed by the USDA, unless such products are so inspected and passed by the USDA;

(c) a permanent injunction enjoining and restraining defendants and their employees, agents, representatives, successors, and assigns, and any and all persons in active concert or participation with any or all of them, from causing meat, meat food products, poultry, or poultry products, while they are being transported in commerce or held for sale after such transportation, to become adulterated or misbranded; and

(d) costs awarded to plaintiff the United States of America for bringing this action, including reasonable attorneys' fees and disbursements.

Respectfully submitted,


MICHAEL L. LEVY
United States Attorney

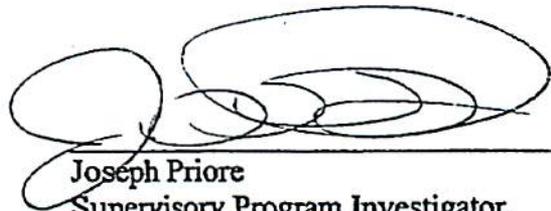
Dated: 10/30/09


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VERIFICATION

I certify under penalty of perjury that the factual allegations in the foregoing Complaint are true and correct, upon information and belief, to the best of my ability pursuant to the dictates of the Federal Rules of Civil Procedure.



Joseph Priore
Supervisory Program Investigator,
United States Department of Agriculture,
Food Safety and Inspection Service

Dated: 10-30-2009