



United States District Court Southern District of Florida

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Notice of Orders or Judgments

Date: 05/25/06

To: Mark Blumstein (aty)
2400 E Commercial Boulevard
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Re: Case Number: 1:05-cv-23340

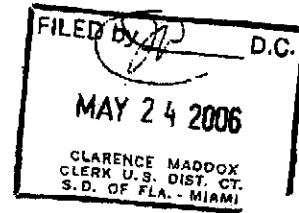
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Number of pages including cover sheet:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION



PHILIP MORRIS USA INC.,

Plaintiff,

CASE NO. 05-23340 CIV-KING
MAGISTRATE JUDGE GARBER

**CLOSED
CIVIL
CASE**

vs.

TAIYO TRADING CORPORATION, a Florida
corporation; and DOES ONE through TEN,
inclusive,

**FINAL DEFAULT
JUDGMENT AND PERMANENT
INJUNCTION AS TO DEFENDANT
TAIYO TRADING CORPORATION**

Defendants.

Plaintiff, Philip Morris USA Inc., ("Philip Morris USA") having properly served a Summons and Complaint upon Defendant, Taiyo Trading Corporation ("Taiyo"), and Taiyo having failed to timely respond to the Complaint, it is thereby ORDERED, ADJUDGED, and DECREED as follows:

1. This is an action for: (1) infringement of registered trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114; (2) false designation of origin and trademark and trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (3) unlawful importation of trademark infringing goods in violation of Section 42 of the Lanham Act, 15 U.S.C. § 1124 (4) unlawful importation of trademark infringing goods in violation of Section 526(a) of the Tariff Act, 19 U.S.C. § 1526(a); (5) fraudulent and deceptive trade practices in violation of Fla. Stat. §§ 501.201 *et seq.*; and, (6) unfair competition in violation of the common law of the State of Florida. This Court has personal jurisdiction over Philip Morris USA and Taiyo, and subject matter jurisdiction of the matter in controversy between Philip Morris USA and Taiyo. Venue in this judicial district is proper.

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2. Taiyo has not made any objections regarding the sufficiency of process or the sufficiency of service of process in this action.

3. Philip Morris USA manufactures cigarettes, including the famous MARLBORO® brand, for sale in the United States. Philip Morris USA is the registered owner of the following Marlboro and Marlboro-related trademarks on the Principal Register of the United States Patent and Trademark Office, all of which are valid, subsisting and incontestable pursuant to 15 U.S.C. § 1065 (collectively, the "Marlboro Marks"):

Registration Number	Registration Date	Trademark
68,502	April 14, 1908	MARLBORO
938,510	July 25, 1972	MARLBORO Red Label

4. Philip Morris USA has spent substantial time, effort, and money advertising and promoting the Marlboro Marks throughout the United States, and consequently these marks have developed significant goodwill, have become distinctive, and have acquired secondary meaning. As a result of the sale of counterfeit cigarettes displaying the MARLBORO® and/or MARLBORO Roof Design Label® trademarks, Philip Morris USA is suffering a loss of the enormous goodwill associated with the Philip Morris USA marks, and is losing profits from lost sales of genuine products.

5. On or about March 17, 2003, and subsequent to Philip Morris USA's adoption and first use of the Marlboro Marks, the United States Bureau of Customs and Border Protection, formerly known as the United States Customs Service ("Customs"), provided Philip Morris USA with a Notice of Seizure of Infringing Merchandise ("Notice of Seizure") identifying Taiyo, located

at 3716 Alcantara Avenue, Miami, Florida 33178, as the importer of record for a shipment of counterfeit cigarettes that infringed upon the MARLBORO® and MARLBORO Roof Design Label® trademarks.

6. The Notice of Seizure (No. 03-5206-000519) concerned the seizure of a shipment containing approximately 2,100,000 counterfeit cigarettes (210 boxes) displaying the MARLBORO® and MARLBORO Roof Design Label® trademarks imported into the Port of Miami on or about March 17, 2003.

7. On December 29, 2005, Philip Morris USA filed its Complaint against Taiyo. Philip Morris USA served Taiyo with the Complaint by personal service on January 3, 2006. Taiyo did not answer or otherwise respond to the Complaint.

8. Entry of the Clerk's Default against Taiyo was recorded on May 11, 2006, for Taiyo's failure to timely respond to Philip Morris USA's Complaint. On May 22, 2006, Philip Morris USA presented this Court with its Application for Default Judgment against Taiyo. Taiyo did not file any opposition to this Application.

9. Accordingly, it is hereby **ORDERED** that Taiyo and Taiyo's agents, servants, employees, and attorneys, and all persons in active concert or participation with Taiyo, are hereby **PERMANENTLY ENJOINED** from:

- (i) purchasing, importing, selling, offering for sale, or otherwise using in commerce any counterfeit cigarettes bearing the Marlboro Marks, including without limitation cigarettes displaying the MARLBORO® and MARLBORO Roof Design Label® trademarks; and,

- (ii) assisting, aiding, or abetting any other person or entity in purchasing, importing, selling, offering for sale, or otherwise using in commerce any counterfeit cigarettes bearing the Marlboro Marks, including without limitation cigarettes displaying the MARLBORO® and MARLBORO Roof Design Label® trademarks.

10. **IT IS FURTHER ORDERED THAT**, pursuant to 15 U.S.C. § 1117(c), Taiyo is liable to Philip Morris USA in the amount of \$2,000,000 for violations of Sections 32, 42 and 43(a) of the Lanham Act and Section 526(a) of the Tariff Act.

11. **IT IS FURTHER ORDERED THAT** Taiyo is liable to Philip Morris USA for attorneys' fees in the amount of \$20,772.50 and costs in the amount of \$400.00.

12. The terms of this Judgment and Permanent Injunction shall be enforceable against Taiyo, its successors in interest and assigns, and any persons or business entities working in concert with Taiyo.

13. There being no just reason for delay, the entry of this Final Default Judgment by the United States District Court constitutes entry of final judgment as to all remaining claims asserted in this action by Philip Morris USA against Taiyo pursuant to Federal Rule of Civil Procedure 54(b).

14. The Court shall retain jurisdiction to enforce this Judgment and Permanent Injunction. If Taiyo shall be alleged to have breached the terms of the Judgment and Permanent Injunction, Philip Morris USA shall have the right to reopen this matter upon motion filed and heard on an expedited basis. If this matter is so reopened, Philip Morris USA may pursue any and all remedies it may have against Taiyo, its successors in interest and assigns, and any persons or business entities working in concert with Taiyo.

IT IS SO ORDERED

DATED: May 24, 2006


UNITED STATES DISTRICT JUDGE