

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN VIDEO GAME SYSTEMS,
ACCESSORIES, AND COMPONENTS
THEREOF**

Inv. No. 337-TA-473

LIMITED EXCLUSION ORDER

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. §1337), as amended, in the unlawful importation and sale by respondent Ultimate Game Club Ltd. (UGC) of certain video game accessories covered by the claims of U.S. Design Patent No. D452,282 and U.S. Design Patent No. D452,534, owned by complainant Microsoft Corporation.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that an appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry for consumption of infringing video game accessories. The Commission has also determined to issue a cease and desist order directed to UGC. Finally, the Commission has determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) and (f) do not preclude entry of the limited exclusion order or the cease and desist order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.

Accordingly, the Commission hereby ORDERS THAT:

1. Video game accessories that infringe U.S. Design Patent No. D452,282 or U.S. Design D452,534, that are manufactured abroad by or on behalf of, or imported by or on behalf of, Ultimate Game Club Ltd., or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patents in issue, *i.e.*, until December 18, 2015 for U.S. Design Patent No. D452,282 and December 25, 2015 for U.S. Design Patent No. D452,534, except under license of the patent owner or as provided by law.
2. Video game accessories that are excluded by paragraph 1 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under bond in

the amount of 100 percent of entered value pursuant to section 337(j) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action.

3. In accordance with 19U.S.C. § 1337(1), the provisions of this Order will not apply to video game accessories that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

4. The Commission may modify this Order in accordance with the procedures described in rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

5. The Secretary will serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.

6. Notice of this Order will be published in the *Federal Register*.

By Order of the Commission.

Marilyn R. Abbott
Secretary

Issued: December 24, 2002

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)

CERTAIN VIDEO GAME SYSTEMS,)
ACCESSORIES, AND COMPONENTS)
THEREOF)
_____)

Inv. No. 337-TA-473

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Ultimate Game Club Ltd., 1491 Boston Post Road, Old Saybrook Connecticut 06475 (hereinafter "UGC"), cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, consigning, transferring (except for exportation), and soliciting U.S. agents or distributors for video game accessories that infringe U.S. Design Patent No. D452,282 or U.S. Design Patent No. D452,534, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §1337.

I.

Definitions As used in this Order:

(A) "Commission" will mean the United States International Trade Commission.

(B) "Microsoft" or "Complainant" will mean Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052.

(C) "Ultimate Game Club Ltd.," "UGC," or "Respondent" will mean Ultimate Game Club Ltd., 1491 Boston Post Road, Old Saybrook, Connecticut 06475.

(D) "Person" will mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than UGC or its majority owned or controlled subsidiaries, successors, or assigns.

(E) "United States" will mean the fifty states, the District of Columbia, and Puerto Rico.

(F) The terms "import" and "importation" refer to importation for entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption.

(G) The term "Covered Products" will mean: video game accessories that infringe U.S. Design Patent No. D452,282 or U.S. Design Patent No. D452,534, including Respondent's "X- Selector" and "X-Connection" video game accessories.

II. Applicability

The provisions of this Cease and Desist Order will apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise <>n behalf of Respondent.

III. Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining terms of the respective patents, Respondent will not:

- (A) import or sell for importation into the United States Covered Products;
- (B) market, distribute, offer for sale, sell, consign, or otherwise transfer (except for exportation) in the United States imported Covered Products;
- (C) advertise imported Covered Products;
- (D) solicit U.S. agents or distributors for imported Covered Products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of Covered Products.

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order will be permitted if, in a written instrument, the owner of U.S. Design Patent No. D452,282 and U.S. Design Patent No. D452,534 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of Covered Products by or for the United States.

V. Reporting

For purposes of this reporting requirement, the reporting periods will commence on July 1 of each year and will end on the subsequent June 30. However, the first report required under this section will cover the period from the date of issuance of this Order through June 30, 2003. This reporting requirement will continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of Covered Products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent will report to the Commission the quantity in units and the value in dollars of Covered Products that Respondent has imported or sold in the United States after the importation during the reporting period and the quantity in units and value in dollars of reported Covered Products that remain in inventory in the United States at the end of the reporting period.

Any failure to make the required report or the filing of any false or inaccurate report will constitute a violation of this Order,' and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. §1001.

VI. Record Keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent will retain any and all records relating to the sale, consign, marketing, or distribution in the United States of Covered Products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, will be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counselor or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, and employees who have any responsibility for the importation, marketing, consigning, distribution, or sale of imported Covered Products in the United States; ,

(B) Serve, within fifteen (15) days after the succession of any person referred to in subparagraph VII(A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) will remain in effect until the date of expiration of U.S. Design Patent No. D452,282 or U.S. Design Patent No. D452,534, whichever is later.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such reports with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X. Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), subject to Respondent posting a bond of 100 percent of entered value of the Covered Products. This bonding provision does not apply to Conduct that is otherwise permitted by Section IV of this Order. Covered Products imported on or after the date of issuance of this Order are subject to the entry bond as set forth in the limited exclusion order Issued by the Commission, and are not subject to this bonding provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation are to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the President approves, or does not disapprove within the Presidential review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and orders as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no

subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

Secretary

Issued: December 24, 2002