

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

In the Matter of)
)
) Investigation No. 337-TA-167
CERTAIN SINGLE HANDLE FAUCETS)
)

COMMISSION ACTION AND ORDER

Introduction

The United States International Trade Commission has concluded its investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, of alleged unfair methods of competition and unfair acts in the unauthorized importation of certain single handle faucets into the United States, or in their sale, by the owner, importer, consignee, or agent of either, the alleged effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The Commission's investigation concerned complainant's allegations of (1) common-law trademark infringement, (2) registered trademark infringement, (3) false designation of manufacturing source, (4) palming off, and (5) false advertising.

This action and order provides for the final disposition of investigation No. 337-TA-167 by the Commission.

Background

A complaint was filed with the Commission on September 16, 1983, and supplemented on October 7, 1983, alleging, inter alia, the unfair methods of competition and unfair acts enumerated above. On October 12, 1983, the Commission determined to institute an investigation into those

allegations to determine whether there is a violation of subsection (a) of section 337 and published notice thereof. 48 Fed. Reg. 49106 (Oct. 24, 1983).

On July 24, 1984 the Commission's presiding officer issued an initial determination (ID) finding a violation of section 337 with regard to common-law trademark infringement, registered trademark infringement, and false representation of manufacturing source and a finding of no violation with regard to the other alleged unfair acts. The Commission determined not to review the ID and published notice thereof. 49 Fed. Reg. 34314 (August 29, 1984). Accordingly, the ID became the Commission's determination as to violation of section 337. 19 C.F.R. § 210.53(h). In the same notice, the Commission requested submissions on the appropriate relief to be issued, on the public interest factors (19 U.S.C. § 1337(d)), and on the amount of bond during the 60-day Presidential review period (19 U.S.C. § 1337(g)).

Action

Having reviewed the record in this investigation, including the ID and the submissions on relief, the public interest, and bonding, the Commission determined that --

1. The appropriate relief is an exclusion order pursuant to 19 U.S.C. § 1337(d) excluding from entry into the United States --
 - (i) ball design handles for single handle faucets (including complete or partial single handle faucet assemblies incorporating such handles) whose configuration is the same as or confusingly similar to the trademarked ball design handle except under license from the trademark owner;
 - (ii) ball design handles for single handle faucets (including complete or partial single handle faucet assemblies incorporating such handles) which bear the trademark "DELTA" or colorable imitations thereof (including but not limited to the term "Atled"), except under license from the trademark owner;
 - (iii) packaging for ball design handles for single handle faucets (including packaging for complete or partial single handle faucet assemblies incorporating such

handles), whether or not such packaging contains ball design handles, which bears the Trademark "DELTA" or colorable imitations thereof (including but not limited to the term "Atled"), except under license from the trademark owner- and

(iv) packaging for ball design handles for single handle faucets (including packaging for complete or partial single handle faucet assemblies incorporating such handles), whether or not such packaging contains ball design handles, which bears a depiction of a single handle faucet including the trademarked ball handle design.

2. The public interest factors enumerated in subsection (d) of section 337 of the Tariff Act of 1930 do not preclude the issuance of the exclusion order referred to in paragraph 1 above.
3. The bond provided for in subsection (g)(3) of section 337 of the Tariff Act of 1930 during the period this matter is before the President shall be in the amount of 150 percent of the entered value of the imported ball design handle, provided that if the imported ball design handle is incorporated into a complete or partial single handle faucet assembly the bond shall be in the amount of 150 percent of the entered value of the said faucet assembly, and provided further that if the imported packaging for such ball design handles or such faucet assemblies does not contain such handles or faucet assemblies, the bond shall be in the amount of 150 percent of the entered value of the imported packaging.

Order

Accordingly, it is hereby ORDERED THAT --

1. Ball design handles for single handle faucets (including complete or partial single handle faucet assemblies incorporating such handles) whose configuration is the same as or confusingly similar to the trademarked ball design handle (as illustrated in attachments A and B hereto and made part hereof by reference) are excluded from entry into the United States, except under license from the trademark owner;
2. Ball design handles for single handle faucets (including complete or partial single handle faucet assemblies incorporating such handles) which bear the trademark "DELTA" or colorable imitations thereof (including but not limited to the term "Atled") are excluded from entry into the United States, except under license from the trademark owner;
3. Packaging for ball design handles for single handle faucets (including packaging for complete or partial single handle faucet assemblies incorporating such handles), whether or not such packaging contains such ball design handles or such faucet assemblies, which bears the trademark "DELTA" or colorable imitations thereof (including but not limited to the term "Atled"), is excluded from entry into the United States, except under license from the trademark owner;

4. Packaging for ball design handles for single handle faucets (including packaging for complete or partial single handle faucet assemblies incorporating such handles), whether or not such packaging contains such ball design handles or faucet assemblies, which bears a depiction of a single handle faucet including the trademarked ball handle design (as illustrated in attachment C hereto and made part hereof by reference) is excluded from entry into the United States, except under license from the trademark owner;
5. The articles to be excluded from entry into the United States pursuant to paragraphs 1 through 4 of this Order shall be entitled to entry under bond in the amount of 150 percent of the entered value of the imported ball design handle from the day after this order is received by the President pursuant to 19 U.S.C. § 1337(g) until such time as the President notifies the Commission that he approves or disapproves, but, in any event, not later than 60 days after the date of receipt, provided that if the imported ball design handle is incorporated into a complete or partial single handle faucet assembly the bond shall be in the amount of 150 percent of the entered value of the said faucet assembly, and provided further that if the imported packaging for such ball design handles or such faucet assemblies does not contain such handles or faucet assemblies, the bond shall be in the amount of 150 percent of the entered value of the imported packaging;
6. The Secretary shall publish notice of this Action and Order in the Federal Register;
7. The Secretary shall serve copies of this Commission Action and Order and the Commission Opinion in support thereof upon each party of record to this investigation and upon the Department of Health and Human Services, the Department of Justice the Federal Trade Commission, and the Secretary of the Treasury; and
8. The Commission may amend this order in accordance with the procedure described in 19 C.F.R § 211.57.

By order of the Commission.

Kenneth R. Mason
Secretary

Issued: October 24, 1984