

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

In the Matter of)
)
CERTAIN WOODWORKING MACHINES) Investigation No. 337-TA-174
)

COMMISSION ACTION AND ORDER

Background

The subject investigation was conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. S 1337) in the importation or sale of various woodworking machines and integral components thereof, by reason of alleged patent infringement, registered and common-law trademark infringement, false representation of manufacturing source, passing off, and false and deceptive advertising, the alleged effect or tendency of which unfair acts and practices is to substantially injure an industry, efficiently and economically operated, in the United States.¹

The original complainant was Rockwell International. Corp. Delta International Machinery Corp. was substituted as the complainant after Delta acquired Rockwell's Power Tool Division and the subject patent and trademark rights.² The respondents and intervenors included 1 South African company, 29 Taiwanese companies, and 21 U.S. companies.³ Most of the respondents settled with

¹48 Fed. Reg. 55786 (Dec. 15, 1983). See also 49 Fed. Reg. 20767 (May 16, 1984) and verified revised amended complaint.

²49 Fed. Reg. 23463 (June 6, 1984).

³See n. 1, supra and 50 Fed. Reg. 7969 (Feb. 27, 1985).

Delta or were dismissed for other reasons.⁴

On February 7, 1985, the presiding administrative law judge (ALJ) issued an initial determination (ID) holding the remaining respondents in default and finding certain respondents in violation of section 337.

On April 1, 1985, the Commission determined to review portions of the ID concerning common-law trademark infringement (i.e., external design appearance marks), patent infringement, misappropriation, definition of the domestic industry, injury, and the alleged violation of section 337 b Taiwan respondent Leroy International Corp.⁵

The Commission also determined not to review those portions of the ID concerning common-law trademark infringement (the term "Contractor's Saw"), registered trademark infringement, false and deceptive advertising, passing off, efficient and economic operation, default, and the dismissal of two respondents. To supplement the ALJ's discussion of those issues, the Commission adopted certain findings of fact proposed by Delta and the Commission investigative attorney.⁶

Between March 28 and April 9, 1985, Delta and the following Taiwan respondents filed joint motions for consent orders directed to those respondents:

1. Formosan United Corporation (Motion No. 174-72"C").
2. Good Will Mercantile Co. (Motion No. 174-73"C").

⁴Id.; 49 Fed. Reg. 32692 (Aug. 15, 1984); 49 Fed. Reg. 35874 (Sept. 12, 1984); 49 Fed. Reg. 39118 (Oct. 3, 1984); 49 Fed. Reg. 39928 (Oct. 11, 1984); 49 Fed. Reg. 40678 (Oct. 17, 1984); 49 Fed. Reg. 50314 (Dec. 27, 1984); 50 Fed. Reg. 1138 (Jan. 6, 1985); 50 Fed. Reg. 3423 (Jan. 24, 1985); 50 Fed. Reg. 9142 (Mar. 6, 1985); 50 Fed. Reg. 20303 (May 15, 1985).

⁵50 Fed. Reg. 14172 (Apr. 10, 1985).

⁶Id.

3. Show Soon Enterprises Co., Ltd. (Motion No. 174-74"C").
4. Fortune Development Corporation (Motion No. 174-75"C").
5. King Feng Fu Machinery Works Co., Ltd. (Motion No. 174-77"C").
6. King Tun Fu Machinery Co. (Motion No. 174-77"C").

Between April 22 and 30, 1985, Delta and the Commission investigative attorney filed briefs on the issues under review and on the issues of remedy, the public interest, and bonding. Although the Commission solicited write comments from the public and other Federal agencies concerning remedy, the public interest, and bonding,⁷ none were received.

This Action and Order provides for the Commission's final disposition of all matters pending in investigation No. 337-TA-174.

ACTION

1. Consent order motions

Inasmuch as the consent order motions are unopposed and raised no issue that requires findings of fact, the Commission determined on May 17, 1985, that certifying the motions to the administrative law judge for an ID would serve no useful purpose and would unnecessarily delay the final disposition of the motions.⁸ The Commission therefore decided to rule on the motions directly and waive the provisions of rules 210.51(b)(2) and 211.20(b) (19 C.F.R. § 210.51(b)(2), 46 Fed. Reg. 46123, Nov. 23, 1984, and 19 C.F.R. § 211.20(b)), which require that motions for termination and the entry of consent orders be submitted to an administrative law judge for an initial determination.

⁷Id.

⁸See 50 Fed. Reg. 23085 (May 30, 1995).

The Commission also has determined that the content of each motion, settlement agreement, and proposed consent order complies with the Commission's rules. The Commission also has found that there is no indication that the parties' settlement is not in the public interest or that the public would be adversely affected by issuance of the proposed consent order.⁹ The Commission therefore has determined to grant the motions and to issue the consent orders.

2. Review of ID and violation of section 337

Having adopted portions of the violation ID and reviewed other portions thereof, and having considered the arguments of the parties and the record compiled in this investigation, the Commission has determined that there is a violation of section 337 in the importation or sale of certain woodworking machines and integral component thereof, by reason of the unfair acts of common-law trademark infringement (i.e., the term "Contractor's Saw"), patent infringement, registered trademark and logo infringement, passing off, and false and deceptive advertising, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated in the United States.

The Commission has determined that there is no violation of section 337 by Taiwan respondent Leroy International. The Commission also has determined that there is no violation of section 337 by reason of the infringement of Delta's alleged common-law trademarks in the overall external designs of its 10-inch table saw and 14-inch band saw.

Commissioners Eckes and Rohr also have determined that there is no violation of section 337 in

⁹Public inspection copies of the motions, settlement agreement, and proposed consent order, and a notice soliciting written comments thereon, were served on other Federal agencies on May 22, 1985. The aforesaid notice was published in the Federal Register of May X, 1985 (50 Fed. Reg. 23085). No comments were filed.

the importation or sale of the accused wood planing machines.

The Commission has determined further that-

1. The appropriate remedy for the violation of section 337 in this case is a general exclusion order pursuant to subsection (d) of section 337;

2. The public interest considerations enunciated in subsections (d) and (f) of section 337 do not preclude such relief;

3. The bond during the Presidential review period shall be 268 percent of the entered value of the articles covered by the exclusion order.

ORDER

In accordance with the foregoing action, it is hereby ORDERED THAT-

1. Motions Nos. 174-72"C," -73"C", -74"C", -75"C," and -77"C" are granted; and
2. The proposed consent order appended to each motion shall be issued.

It is further ORDERED THAT-

1. Wood planing machines that infringe claims 1, 2, 3, 4, or 5 of U.S. Letters Patent 4,436,126 (such as those depicted in Exhibits N-P) are excluded from entry into the United States for the remaining term of the patent (i.e., until March 13, 2001), except under license from the patent owner;
2. Blade guard assemblies that infringe claims 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, or 14 of the U.S. Letters Patent 3,754,493 (whether imported individually or as part of a woodworking machine) are excluded from entry into the United States for the remaining term of said patent (i.e., until Aug. 28, 1990), except under license from the patent owner;
3. Adjustable height fences that infringe claims 1, 2, 3, or 4 of U.S. Letters Patent 4,174,100 (whether imported individually or as part of a woodworking machine) are excluded from-entry into the United States for the remaining term of-said patent (i.e., until Nov. 13, 1996), except under license from the patent owner;
4. Woodworking machines and their packaging, instruction and user manuals, and promotional material that infringe-
 - a. complainant Delta International Machinery Corp.'s common-law trademark "Contractor's Saw" or colorable imitations thereof¹⁰ ; or

¹⁰E.g., "Contractor's Special."

- b. the registered trademark "Unisaw" (Registration No. 369,416); or
- c. the registered trademark "Rockwell"(registration No. 765,006); or
- d. the registered "Rockwell" logo (registration No. 1,031,246), which is depicted in exhibit Q to this Action and Order-

are excluded from entry into the United States, except under license from the owner of the aforesaid trademarks and logo;

- 5. The articles ordered to be excluded from entry into the United States pursuant to paragraphs 1-4 above shall be entitled to entry under a bond in the amount of 268 percent of the entered value of the subject articles from the day after this order is received by the President pursuant to subsection (g) of Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(g)(2)), until such time as the President notifies the Commission that he approves or disapproves this action, but, in any event, not later than 60 days after receipt of this action;
- 6. The Commission may amend the foregoing provisions of this order in accordance with the procedure described in section 21.1.57 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 211.57); and
- 7. The Secretary shall serve copies of this Commission Action and Order, the Commission Opinion in support thereof, and the attached notice upon each party of record to this investigation, and shall publish notice thereof in the Federal Register.

By order of the Commission,

Kenneth R. Mason
Secretary

Issued: June 18, 1985