

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

In the Matter of)
) Investigation No. 337-TA-195
CERTAIN CLOISONNE JEWELRY)
)

COMMISSION ACTION AND ORDER

BACKGROUND

On May 31, 1984, the Commission instituted investigation No. 337-TA-195, Certain Cloisonne Jewelry, to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(a)) in the importation into and sale in the United States of certain cloisonne jewelry by reason of alleged (1) infringement of U.S. Copyright Registration Nos. VA 108-466, VA 108-465, VA 107-361, VA 105-485, VA 116-449, VA 137-741, VA 137-743, VA 116-448, VA 137-749, VA 137-758, VA 116-451, VA 137-748, VA 137-747, VA 116-447, VA 137-757, VA 137-744, VA 137-755, VA 137-740, or VA 116-450; and (2) passing off. The issue of alleged passing off was deleted from the notice of investigation at the time of the initial determination, with complainant's consent, no evidence having been presented on that issue. The investigation was based on a complaint filed by Laurel Burch, Inc. (LBI) on April 26, 1984. LBI is the exclusive licensee of the registered copyrights. The complaint further alleged that the effect or tendency of these unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

Fourteen parties were named as respondents in the notice of investigation. Four foreign respondents -- (1) Chen Wei Handicrafts Co., Ltd. of Taiwan, (2) Ching Sheng & Co., Ltd. of

Taiwan, (3) Chen Will Handicraft Co. Ltd. of Taiwan, and (4) Giocosco Products Co., Ltd. of Taiwan - were alleged to be foreign manufacturers and/or exporters of the allegedly infringing jewelry. One foreign respondent, National Quality Co., Ltd. of Taiwan was alleged to be an exporter of the allegedly infringing jewelry. Eight domestic respondents and one foreign respondent -- (1) Humber Pacific of Vancouver, Canada, (2) Perfect Pearl Company of Illinois, (3) Perfect Pearl Company of New York, (4) Diamond Sales of Connecticut, (5) Mr. Daniel Vianale of New York, (6) I1 Hwa of New York, (7) Mr. David Rasnick of California, (8) Far Eastern Traders of New York, and (9) The Answer Ltd. of Wisconsin -- were alleged to be engaged in the importation into and/or sale in the United States of the allegedly infringing jewelry.

On August 23, 1984, the presiding administrative law judge (ALJ) issued an initial determination (ID) (Order No. 4) granting a joint motion to terminate the investigation as to respondent The Answer, Ltd on the basis of a settlement agreement. The Commission issued a notice of its determination not to review the ID on September 20, 1984. 49 F.R. 37857 (Sept. 26, 1984). On November 27, 1984, the ALJ issued an ID (Order No. 6), granting -complainant's motion to terminate this investigation as to respondent Humber Pacific-. The Commission issued notice of its determination not to review the ID on December 26, 1984. 50 F.R. 358 (Jan. 3, 1985).

Complainant filed a motion (Motion No. 195-3) for summary determination as to all issues in this investigation on November 6, 1984. The motion was accompanied by a supporting memorandum, affidavits, and exhibits. The Commission investigative attorney filed a response in support of the motion. Although none of the respondents had formally entered an appearance in the investigation, certain letters were received from respondents Daniel Vianale and I1 Hwa, David Rasnick, Humber Pacific,

Chen Wei, and Chen Will. None of these letters were verified or under oath. However, the ALJ considered the allegations therein in deciding the motion for summary determination. There are no affidavits or exhibits on the record apart from those submitted by complainant.

On March 6, 1985, the ALJ issued his ID granting complainant's motion for summary determination. The ALJ concluded that there were no genuine issues of material fact, and that therefore complainant was entitled to summary determination. He found that there was a violation of section 337 in the importation and sale of the subject cloisonne jewelry. On April 8, 1985, the commission determined not to review the A which thereupon became the Commission's determination on violation of section 337. 50 F.R. 15235 (April 17, 1985). The issue of violation having been decided by the Commission's determination not to review the ID dealing with violation of section 337, the issues remaining for the Commission to decide are those of remedy, the public interest, and bonding.

Action

Having determined that the issues of remedy, the public interest, and bonding are properly before the Commission, and having reviewed the written submissions filed on remedy, the public interest, and bonding and those portions of the record relating to those issues, the Commission has determined to issue a general exclusion order prohibiting entry into the United States, except under license of the copyright owner, of cloisonne jewelry which infringes U.S. Copyright Registration Nos. VA 108-466, VA 108-465, VA 107-361, VA 105-485, VA 116-449, VA 137-741, VA 137-743, VA 116-448, VA 137-749, VA 137-758, VA 116-451, VA 137-748, VA 137-747, VA 116-447, VA 137-757, VA 137-744, VA 137-755, VA 137-740, or VA 116-450.

The Commission has also determined that the public interest factors enumerated in section 337(d) (19 U.S.C. S 1337(d)) do not preclude issuance of the aforementioned general exclusion order, and that the bond during the Presidential review period should be in the amount of 900 percent of the entered value of the articles concerned.

Order

Accordingly, it is hereby ORDERED THAT--

1. Cloisonne jewelry which infringes U.S. Copyright Registration Nos. VA 108-466, VA 108-465, VA 107-361, VA 105-485, VA 116-449, VA 137-741, VA 137-743, VA 116-448, VA 137-749, VA 137-758, VA 116-451, VA 137-748, VA 137-747, VA 116-447, VA 137-757, VA 137-744, VA 137-755, VA 137-740, or VA 116-450, is excluded from entry into the United States for the remaining term of the copyrights, except under license of the owner of the copyrights;
2. The articles ordered to be excluded from entry into the United States shall be entitled to entry under bond in the amount of 900 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, 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 the date of receipt of this action;
3. 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 publish notice thereof in the Federal Register; and
4. The Commission may amend this order in accordance with the procedure described in section 211.57 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 211.57).

By order of the Commission.

Kenneth R. Mason
Secretary

Issued: June 6, 1985