

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

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In the Matter of)	
CERTAIN COMPOUND ACTION)	Investigation No. 337-TA-197
METAL CUTTING SNIPS AND)	
COMPONENTS THEREOF)	
_____)	

COMMISSION ACTION AND ORDER

Background

On July 5, 1984, the Commission instituted investigation No. 337-TA-197, Certain Compound Action Metal Cutting Snips and Components Thereof, to determine whether there is a violation of section 337 of the Tariff Act of 1930 U.S.C. § 1337) in the importation into and sale in the United States of certain compound action metal cutting snips by reason of (1) infringement of complainant's Register Trademark No. 640,640 for METALMASTER; (2) infringement of complainant's common-law trademark for the designations M1, M2, M3; (3) misappropriation of trade dress; (4) false and deceptive advertising; (5) misrepresentation of source; (6) false designation of origin; and (7) passing off, the effect or tendency of which unfair acts is to destroy or Substantially injure an industry, efficiently and economically operated, in the United States.

The investigation was based upon the complainant of Cooper Industries, Inc. (Cooper) filed on June 7, 1984. Cooper, through its Subsidiaries. is engaged in the manufacture of hand tools and is the owner of the registered trademark in controversy.

The Commission's notice of investigation originally named ten respondents to the investigation. Three foreign respondents -- (1) Fedco International, Inc. of Taiwan, (2) Home-Rain Enterprise Co., Ltd. of Taiwan, and (3) Harko Industrial Co., Ltd. of Taiwan -- were alleged to be foreign manufacturers and/or exporters of the allegedly infringing metal cutting snips. Seven domestic respondents -- (1) U.S. General Supply Corp. of New York, (2) Homier Distributing Co. of Indiana, (3) Action Eagle, Inc. of California, (4) J & C Wholesale of Michigan, (5) Coast Freight of California, (6) Jameson & Sons of Pennsylvania, and (7) Azco Tool, Inc. of California -- were alleged to be engaged in the importation into and/or sale in the United States of the allegedly infringing metal Cutting snips.

None of the named respondents entered an appearance this investigation. However, respondents Fedco International, Inc. (Fedco); Home-Chain Enterprises, Co., Ltd. (Home-Chain); Action Eagle, Inc. (Action Eagle); Jameson & Son (Jameson); and Harko Industrial Co., Ltd. (Harko) responded to the complaint by letter. The presiding administrative law judge (ALJ) held a preliminary conference on September 5, 1984, at which complainant and the Commission investigative attorney (IA) entered appearances.

On September 21, 1984, the ALJ granted respondent Action Eagle's motion for termination as a respondent in the investigation (Order No. 4). The Commission issued a notice of its decision not to review the ID terminating Action Eagle on October 31, 1984. 49 Fed. Reg. 43808 (1984). On September 24, 1984, the ALJ denied complainant's motion to amend the complaint to add Marco Corp. and Zayre Corp. as respondents to the investigation (Order No. 5). In two orders issued on January 24, 1985 (Orders Nos. 8, and 9), the ALJ granted the motions of complainant and the IA to compel discovery from certain respondents. Subsequently,

complainant filed a motion on February 12, 1985 (Motion No. 197-9), for entry of default and adverse inferences against respondents Home-Chain, Fedco. Homier-, Harko, J & C Wholesale, Azco Tool, Coast Freight, and U.S. General Supply. The IA supported the motion in part, and the ALJ granted the motion in part in the final ID.

The ALJ held a prehearing conference on February 11, 1985 and the evidentiary hearing followed immediately thereafter. Both complainant and the IA entered appearances, but no respondent appeared at either the prehearing conference or the hearing itself. The evidentiary hearing concluded on February 12, 1985.

On April 8, 1985, the ALJ granted the joint motion of complainant Cooper and respondent U.S. General to terminate the investigation as to U.S. General on the basis of a consent order (Order No. 12). The Commission issued a notice of its decision not to review the ID terminating U.S. General on May 10, 1985. 50 Fed. Reg. 21146 (1985). In another ID issued on April 18, 1985, the ALJ granted the joint motion of complainant Cooper and respondent Azco to terminate Azco as a respondent on the basis of a settlement agreement (Order No. 13). The Commission determined not to review the ID and issued a notice to that effect on May 23, 1985. 50 Fed. Reg. 23083 (1985).

On April 18, 1985, the Commission's ALJ issued an ID that there is a violation of section 337 in the importation and sale of the compound action metal cutting snips under investigation. Specifically, the ALJ found that complainant is the exclusive owner of Registered Trademark No. 640,640 for METALMASTER and that the accused devices manufactured, imported, and sold by respondents infringe that registered trademark. Further, the ALJ found that the accused products infringe complainant's common-law trademark in the designations M1, M2, and M3;

that respondents have misappropriated complainant's sleeve packaging trade dress; and that respondent Coast Freight had falsely advertised that its own cold-stamped metal cutting snips have hot drop-forged molybdenum steel blades. While the ALJ found that no respondent has failed to designate the country of origin in connection with imported metal cutting snips, he did find that respondents have passed off imported snips as having originated from complainant. The ALJ determined that the effect or tendency of certain respondents' unfair acts is to destroy or substantially injury an efficiently and economically operated domestic industry.

On May 31, 1985, complainant and respondent Jameson moved the Commission to terminate the investigation as to Jameson (Motion No. 197-14). However, before action could be taken on that motion, the Commission decided not to review the ID, which became the Commission's determination on violation of section 337. 50 Fed. Reg. 24712 (1985).

The issue 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 the proposed termination of respondent Jameson, remedy, the public interest, and bonding.

Action

Having determined that these issues are properly before the Commission, and having reviewed the written submissions filed on the proposed termination of respondent Jameson, remedy, the public interest, and bonding and those portions of the record relating to those issues, the Commission has determined to deny as moot the motion to terminate respondent Jameson and to issue a general exclusion order prohibiting entry into the United States of the following:

- (1) compound metal cutting snips that bear the "METALMASTER", "M1," "M2," or "M3," marks or colorable imitations thereof (including those snips bearing the designations "R-M1," "R-M2," or "R-M3") ;
- (2) packaging or sales and advertising materials for snips that bear the "METALMASTER". "M1," "M2," or "M3" marks or colorable imitations thereof (including packaging or materials bearing the designations "R-M1," "R-M2," or "R-M3"); and (3) packaging or sales and advertising materials which incorporate a red and white hexagonal shield and is confusingly similar to complainant's trade dress.

The Commission has also determined to issue cease and desist orders prohibiting respondents J & C Wholesale and Coast Freight from passing off their imported compound action metal cutting snips as having originated with complainant.

The Commission has also determined that the public interest factors enumerated in subsections 337(d) and (f) (19 U.S.C. § 1337(d) and (f)) do not preclude issuance of the aforementioned exclusion order, and cease and desist orders, and that the bond during the Presidential review period should be in the amount of 170 percent of the entered value of the articles concerned.

Order

Accordingly, it is hereby ORDERED THAT--

1. Compound action metal cutting snips that bear the "METALMASTER", "M1," "M2," or "M3" marks or colorable imitations thereof (including those snips bearing the designations "R-M1," "R-M2," or "R-M3") are excluded from entry into the United States except under license from the trademark owner;

2. Packaging or sales and advertising materials for snips that bear the "METALMASTER", "M1," "M2," or "M3" marks or colorable imitations thereof (including packaging or materials bearing the designations "R-M1," "R-M2," or "R-M3") are excluded from entry into the United States, except under license of the trademark owner;
3. Packaging or sales and advertising materials which incorporate a red and white hexagonal shield and are confusingly similar to complainant's trade dress are excluded from entry into the United States, except under license of the trademark owner;
4. Respondents J & C wholesale and Coast Freight shall cease and desist from passing off their imported compound action metal cutting snips as having originated with complainant, as provided in the cease and desist orders attached hereto;
5. The articles ordered to be excluded from entry into the United States shall be entitled to entry under bond in the amount of 170 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;
6. The joint motion (Motion No. 197-14) to terminate respondent Jameson & Sons, Inc. on the basis of a settlement agreement is denied as moot;
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 publish notice thereof in the Federal Register; and
8. The Commission may amend this order 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: July 19, 1985