

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

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In the Matter of )  
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 ) Investigation 337-TA-229  
CERTAIN NUT JEWELRY AND PARTS )  
THEREOF )  

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COMMISSION ACTION AND ORDER

Background

On October 16, 1985, the Commission instituted Investigation No. 337-TA-229, Certain Nut Jewelry and Parts Thereof, 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 into and sale in the United States of certain nut jewelry and parts thereof by reason of (1) false advertising, (2) failure to mark country of origin, (3) false designation of origin, and (4) false representation, 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 on a complaint filed by Kukui Nuts of Hawaii, Inc. (KHN) on September 16, 1985. The following sixteen firms were named respondents in the Commission's notice of investigation:

1. RKG Enterprises (RKG);
2. Huang Hou Crafts (Huang Hou);
3. Royal Design Creations (Royal Design);
4. Oriental Arts & Crafts (Oriental Arts);
5. Farlace Int'l Corp. (Farlace);
1. Shine Land, Inc. (Shine Land);
2. Joey Pong & Co., Inc. (Joey Pong);
3. Ali Baba Import & Export (Ali Baba);
4. RDCO, Inc. (RDCO);

5. R. Baird & Co. (Baird);
6. Blair, Ltd. (Blair);
7. Taiwan Kyoei, Inc. (Taiwan Kyoei);
8. Betty's Import & Associates, Inc. (Betty's)
14. Paul's Imports (Paul's);
15. Pong Lai Coral Development WLtd. to Laik
16. Liven & Co. (Liven).

On April 11, 1986, the ALJ issued an ID (Order No. 35) granting a joint motion by complainant, the Commission investigative attorney (IA), and respondent Blair for termination of the investigation as to Blair based on a consent order. On April 22, 1986, the ALJ issued another ID (Order No. 42) granting a joint motion by complainant, the IA, and respondent RDCO for termination of the investigation as to RDCO based on a consent order. The wording of the RDCO consent order agreement is identical to the wording of the Blair agreement.

By Orders Nos. 47, 48, 49, and 50, issued May 1, 1986, ALJ denied joint motions by complainant, the IA, and respondents Baird, Ali Baba, Pong Lai, and Liven for termination of the investigation as to them on the basis of consent orders. The ALJ found that it was not in the public interest to prohibit certain respondents, through consent orders, from using the words "genuine," "authentic," "guaranteed" and like-meaning words and further restricting those respondents in the use of the words "Hawaii" and any form or derivative thereof and the word "kukui" and any similar appearing and sounding word on advertising matter for imported nut jewelry. The ALJ stated that no exclusive rights to those words had been demonstrated by complainant. The ALJ also stated that he would find the consent order agreements acceptable if they were reworded to state only that the imported nut jewelry shall be marked, in a conspicuous place as legibly, indelibly, and permanently as the nature of the jewelry permits, to indicate to an ultimate purchaser in the United States the English name of the country of origin of the jewelry.

On May 15, 1986, the Commission issued notices of its decision to review and remand the IDs terminating the investigation as to Blair and RDCO on the basis of consent orders. The notices stated that the ALJ had denied apparently identical motions with respect to other respondents in the investigation and that, in light of the denial of those motions, the Commission was remanding the IDs pertaining to Blair and RDCO for reconsideration by the ALJ.

At the prehearing conference held on May 27, 1986, complainant and the IA orally moved that the IDs concerning Blair and RDCO be recertified to the Commission because the involved consent orders are in the public interest. The motion was denied.

On July 30, 1986, the ALJ issued his final ID finding a violation of section 337. On reconsideration of the joint motions (Motions Nos. 229-15 and 229-18) to terminate the investigation as to Blair and RDCO on the basis of consent orders, the ALJ denied the motions.

The ALJ found that respondents Blair, Huang Hou, Royal Design, Oriental Arts, Farlace, Shine Land, Ali Baba, RDCO, Baird, Taiwan Kyoei, Pong Lai, and Liven had each engaged in unfair acts under section 337 and were in violation of section 337. ID at 121, 122. Regarding RKG and Joey Pong, the ALJ found there was no evidence of any impartation and sale. ID at 26. Accordingly, the ALJ found neither RKG nor Joey Pong to be in violation of section 337.

The ALJ defined the domestic industry as the operations of complainant KNH devoted to the production of kukui nut jewelry from Hawaiian-grown kukui nuts. He found that the domestic industry was efficiently and economically operated and that complainant had met its burden of showing present substantial injury as well as the requisite nexus between the injury suffered and the unfair acts. Finally, the ALJ found that there exists a tendency to substantially injure the domestic industry by reason of respondents' imports.

On September 22, 1986, the Commission determined to review portions of the ID. Specifically, the Commission decided to review (1) the definition of the relevant domestic industry; and (2) whether the joint motions (Motions Nos. 229-15 and 229-18) to terminate the investigation as to respondents Blair and RDCO on the basis of consent orders should be granted. 51 Fed. Reg. 33935.

#### Action

Having reviewed the written submissions filed regarding the issues under review, remedy, the public interest, and bonding and those portions of the record relating to those issues, the Commission has determined to grant the joint motions to terminate respondent Blair, Ltd. and respondent RDCO, Inc. based on consent orders directed at these two respondents and to vacate the ALJ's determinations of violation of section 337 as to those respondents. The Commission has also determined to issue a general exclusion order prohibiting entry into the United States of jewelry made from candlenuts of the genus "aleurites" and the species "molucanna", including talls subspecies and varieties thereof, and/or any other jewelry purporting to be made from "kukui nuts," unless a printed label meeting all the following requirements is attached thereto:

- (1) the label, to the extent reasonably possible, shall be designed, made and attached in a manner to inhibit any person except the ultimate purchaser in the United States from destroying, removing, altering, covering, or obliterating the label or its contents;
- (2) the label shall state, legibly, permanently, and conspicuously, the English language name of the country of origin in type size not smaller than the size of the largest type size appearing on the label;
- (3) if the label contains the words "United States," "American," "Hawaii," "Hawaiian," the

letters "U.S.A.," or any variation of such words or letters, or the name of any other city or locality in the United States, or the words "genuine," "authentic," or "guaranteed," or words of similar meaning, then the country of origin marking must be in close proximity to such words, letters, or names, and in at least a comparable type size to such words, letters or names;

- (4) the label shall state in close proximity to the required country of origin marking and in at least the same type size: "Removal of this disclosure of foreign origin prior to final sale may be punishable by law under 19 U.S.C. S 1304(e)"; and
- (5) the label shall not bear any representation, including any depiction, symbol, characteristic feature, or scene of the State of Hawaii, such that the label suggests the nuts are grown or processed in the State of Hawaii, or that the nuts or jewelry were processed, strung, or manufactured in the State of Hawaii.

The Commission has also determined to issue cease and desist orders prohibiting respondents Ali Baba Import & Export; R. Baird & Co.; Pong Lai Coral Development Co., Ltd.; and Liven Co. from representing, aiding, or encouraging other persons to represent, explicitly or by implication, orally or in sales, advertising, or promotional material for imported nut jewelry, that such jewelry was manufactured, processed, or strung in Hawaii or that the nut were grown or processed in Hawaii. OR cease and desist orders also prohibit respondents from marketing, distributing, selling, or offering to sell any imported nut jewelry unless an appropriate label which conforms to the specifications discussed above is attached thereto. Finally, the cease and desist orders prohibit respondents from removing, aiding, or encouraging others to remove the label which conforms to the specifications discussed above.

The Commission has 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 consent orders, exclusion order, and cease and desist orders, and that the bond during the Presidential review period should be in the amount of 157 percent of the entered value of the article concerned.

#### Order

Accordingly, it is hereby ORDERED that--

1. Jewelry made from candlenuts of the genus "aleurites" and the species "moluccana", including all subspecies and varieties thereof, and/or any other jewelry purporting to be made from "kukui nuts," including all subspecies and varieties thereof, is excluded from entry into the United States unless a printed label meeting all the following requirements is attached thereto:

- (A) The label, to the extent reasonably possible, shall be designed, made, and attached in a manner to inhibit any person except the ultimate purchaser in the United States from destroying, removing, altering, covering, or obliterating the label or its contents;
- (B) the label shall state, legibly, permanently, and conspicuously, the English language name of the country of origin in type size not smaller than the size of the largest type size appearing on the label;
- (C) if the label contains the words "United States," "American," "Hawaii," "Hawaiian," the letters "U.S.A.," or any variation of such words or letters, or the name of any other city or locality in the United States, or the words "genuine," "authentic," or "guaranteed," or words of similar meaning, then the country of origin marking must be in close proximity to such words, letters, or names, and in at least a comparable type size to such words, letters or names;
- (D) the label shall state in close proximity to the required country of origin marking and in at least the same type size: "Removal of this disclosure of foreign origin prior to final sale may be punishable by law under 19 U.S.C. S 1304(e)"; and
- (E) the label shall not bear any representation, including any depiction, symbol, characteristic feature, or scene of the State of Hawaii, such that the label suggests the nuts are grown or processed in the State of Hawaii, or that the nuts or jewelry were processed, strung, or manufactured in the State of Hawaii.

2. Respondents Ali Baba Import & Export; R. Baird & Co.; Pong Lai Coral Development Co., Ltd.;

and Liven & Co. are ordered to cease and desist from the conduct prohibited by the

attached cease and desist orders.

3. The articles to be excluded from entry into the United States shall be entitled to entry under bond in the amount of 157 percent of the entered value of the imported articles from the day after this Order is received by the President pursuant to 19 U.S.C. S 1337(g) 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;

4. The Secretary shall serve copies of this Commission Action and Order and the Commission Opinion in support thereof 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;

5. The Secretary shall publish notice of this Action and Order in the Federal Register; and

6. 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. S 211.57).

By order of the Commission.

Kenneth R. Mason  
Secretary

Issued: October 31, 1986