

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

In the Matter of)
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)
CERTAIN SOFT SCULPTURE DOLLS,) Investigation No. 337-TA-231
POPULARLY KNOWN AS "CABBAGE)
PATCH KIDS," RELATED LITERATURE)
AND PACKAGING THEREFOR)

)

COMMISSION ACTION AND ORDER

Background

A complaint was filed with the Commission on October 14, 1985, by Original Appalachian Artworks, Inc. and Coleco Industries, Inc., alleging unfair acts and methods of competition in the importation and sale of certain soft sculpture dolls, popularly known as "Cabbage Patch Kids", related literature and packaging therefor. The Commission on October 31, 1995, voted to institute the a captioned investigation 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 certain soft sculpture dolls, popularly known as "Cabbage Patch Kids", related literature and packaging therefor by reason of (1) infringement of U.S. Copyright Reg. Nos. VA 35-804, VA 141-801, TX 1-254-777, TX 1-254-778, and TX 1-261-526; (2) failure to mark the country origin on such unlawfully imported dolls and their packaging in violation of 19 U.S.C. S 1304; and (3) violation of 17 U.S.C. S 601(a) (the Manufacturing Clause). It was alleged that the effect or tendency of these unfair acts and unfair methods of competition was to destroy or substantially injure an industry, efficiently and

economically operated, in the United States. Named as respondents were John and Jane Doe Murrell d/b/a Murrell Marketing, Japan Instruments Corp., Sav-On-Drugs, Inc., Osco Drugs, Inc., and Household Merchandising, Inc. On January 3, 1986, Calila, Inc. and International Panasound Ltd. were added as respondents by amendment of the complaint. The Commission's notice of investigation was published in the Federal Register on November 7, 1985. (50 F.R. 46,368).

On July 11, 1996, the presiding administrative law judge (ALJ) issued an initial determination that there was a violation of section 337 in the importation and sale of certain soft sculpture dolls, popularly known as "Cabbage Patch Kids". Specifically, the ALJ found that (1) the copyrights at issue were valid and infringed by the respondents and that such infringement was an unfair act under section 337; (2) there was no violation of 19 U.S.C. § 1304 for Failure to mark the unlawful imports with their country of origin and, ever) if they were a violation, it did not constitute an unfair act under section 337; and (3) there was no violation of 17 U.S.C. § 601(a), commonly known as the "Manufacturing Clause." The ALJ then determined that the unfair acts had the effect and tendency to substantially injure a domestic industry. In making this determination the ALJ included complainants' licensing activity within the scope of the domestic industry and included operating profits in his value-added computation for the purpose of determining the existence of a domestic industry.

On August 28, 1986, the Commission published in the Federal Register notice of its decision to review certain issues raised by the ALJ's initial determination, These issues were:

- (1) Whether respondents' unauthorized imports violate the country of origin marking statute (19 U.S.C. S 1304) and, if so, whether such violation constitutes an unfair act under section 337.
- (2) Whether the ALJ's determination of the scope of the domestic

industry was correct. In this regard, the Commission was especially interested in (a) whether licensing activity in combination with production activity can constitute a domestic industry under section 337 and (b) whether operating profits are properly included in a value-added computation for the purpose of determining whether there is a domestic industry under section 337,

(3) Whether the unfair acts of respondents have the effect of substantially injuring the relevant domestic industry. The Commission was particularly interested in the question of whether substantial injury can be found during a period when there is no idle domestic capacity and when imported product sold for higher prices than domestic products.

(4) Whether the unfair acts of respondents have the tendency to substantially injure the domestic industry.

No other issues were reviewed and the remainder of the ALJ's initial determination was thereby adopted by the Commission. The Commission's notice of review requested written comments on the issues under review and on the issues of remedy, the public interest, and bonding. Submissions were received from complainants and the Commission investigative attorney (IA), but not from any respondent.

Action

Having reviewed the record in this investigation, including the written submissions submitted in response to the Commission's notice of review, the Commission has determined that there is a violation of section 337. The Commission has also determined that the appropriate remedy in this investigation is a general exclusion order prohibiting the importation of unauthorized "Cabbage Patch Kids" dolls into the United States, that the public interest factors enumerated in section 337(d) (19 U.S.C. 5 1337(d)) do not preclude issuance of such an exclusion order, and that the bond during the Presidential review

period should be in the amount of 165 percent of the entered value of the imported articles.

Order

Accordingly, it is hereby ORDERED THAT---

1. Foreign soft sculpture dolls popularly known as "Cabbage Patch Kids," related birth certificates and adoption papers, and packaging therefor, including but not limited to such models as the 16-inch Cabbage Patch Kids; 14-inch Preemies; 16-inch Twins; 16-inch World Travelers; 16-inch Cornsilk Kids; 14-inch Premie Twins; 16-inch Clowns; 16-inch Astronauts; 16-inch Allstars; and 12-inch Babies, that infringe Original Appalachian Artworks, Inc.'s (OAA's) copyrights, U.S. Copyright Registration Nos. VA-35-804, VA 141-801, TX 1-254-777, TX 1-254-778, and TX 1-261-526, are excluded from entry into the United States until the expiration of all of the aforesaid copyrights, except (1) as provided in paragraph 2 of this order or (2) under license from or with the permission of OAA;
2. The products ordered to be excluded in paragraph 1 above are entitled to entry into the United States under bond in the amount of 165 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, no later than 60 days after the date of such receipt;
3. Notice of this Action and order shall be published in the Federal Register;
4. A copy of this Action and order and of the Commission opinions issued in connection therewith shall be served 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 Secretary of Treasury; and
5. The Commission may amend this Order in accordance with the procedure described in 19 C.F.R. S 211.57.

By Order of the Commission.

Kenneth Mason
Secretary

Issued: November 7, 1986