

U.S. INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)
)
) Investigation No. 69
CERTAIN AIRTIGHT CAST-IRON STOVES)
)
_____)

COMMISSION ACTION AND ORDER

Introduction

The above-captioned investigation was instituted on the basis of a complaint filed with the Commission on May 23, 1979, on behalf of Aksjeselskapet Jotul, a Norwegian company, and Kristia Associates, a corporation of the State of Maine, alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The Commission issued a notice of investigation, which was published in the Federal Register on July 12, 1979 (44 F.R. 40732). In that notice, the Commission ordered that an investigation be instituted under section 337 to determine whether unfair methods of competition and unfair acts exist in the importation or sale in the United States of certain airtight cast-iron wood and coal burning stoves. The notice stated that the investigation was being undertaken to determine whether respondents' stoves were infringing Jotul's common law trademarks, being passed off as Jotul's products, infringing Jotul's registered U.S. trademarks, or being deceptively advertised and marketed. The complaint alleged that the effect of these acts is to injure an industry, Kristia Associates (now Jotul U.S.A. Inc.) and the Jotul stove dealers, efficiently and economically operated in the United States, or to restrain trade and commerce in the United States.

A. This exclusion order applies to all "stoves," which shall mean, for the purposes of this order, any device or apparatus for combustion of fuel which is used for heating or cooking purposes and shall include, (1) a finished stove, which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a stove, and (2) a stove, which at the time of importation, is not fully assembled, and (3) a kit, which at the time of importation contains all of the components necessary to make it a stove, and (4) parts of a stove which comprise the major components thereof or design features which are readily identifiable and comprise the external features of the stove.

B. Any stove whose visual exterior appearance is similar to the stoves of Jotul, Inc. of Oslo, Norway, photographs of which are attached hereto as Exhibit A are excluded from entry. In order to determine similarity to the Jotul models each photograph is accompanied by a set of criteria which shall be used to determine whether the stove is to be excluded or allowed to enter. If the article possesses the same basic shape as the corresponding Jotul stove, it must be found to meet certain standards in order to enter. If a stove has a rectangular box with a smaller box on top as its basic shape, and such boxes are in a proportion to one another similar to those of the boxes Kristia Associates, which had previously been a wholly-owned American company, was to have 100 percent of its stock purchased by Jotul of Norway. A new corporation, Jotul, USA, Inc., incorporated in Delaware, and a subsidiary of Jotul (Norway), would take over all the functions of Kristia. In a submission dated November 25, 1980, counsel for Kristia confirmed that this transfer of stock ownership had taken place. By vote of the Commission on December 5, 1980, Jotul U.S.A. Inc. was substituted for Kristia Associates as a party complainant.

On December 5, 1980, the Commission determined that there are violations of section 337 by

reason of common law trademark infringement, registered U.S. trademark infringement, false and deceptive advertising, and passing off. Therefore, the Commission ordered that an exclusion order issue and that cease and desist orders be imposed against Wood Heat, Heritage Stove Co., Hutch Manufacturing Co., Fireplace Distributors, Meteor Design International, and Great Eastern Trading Co.

Action

Having reviewed the record compiled in this investigation, including (1) the submissions filed by the parties, (2) the transcript of the evidentiary hearing before the ALJ and the exhibits which were accepted into evidence in the course of that hearing, (3) the recommended determination of the ALJ, and (4) the arguments made by the parties at the public hearing before the Commission on November 3, 1980, the Commission on December 5, 1980, determined--

1. That with respect to Hutch Mfg. Co., Fireplace Distributors, Great Eastern Trading Co., Inc., Heritage Stove Co., Meteor Design International Ltd., Genial Jade Industrial Co., Pyramid International Co., Ltd., Justin Taiwan Industrial Co., Ltd., Cathay Overseas Trading Co., Taiwan Active Enterprises Co., Ltd., Tinpin Trading Co., Nan Shang Enterprises Co., Ltd., Linmore Enterprise Co., Ltd., Formosa May, Inc., Hermix Industries Corp., Firebird Hardware, Inc., Lee-Lin Enterprise Co., Ltd., Yulson Industries Co., Ltd.; KFK Industrial Co., Ltd.; Stratford Mfg. Co., Ltd.; You Well Co., Ltd.; Collins Co., Ltd.; and Wood Heat there is a violation of section 337 of the Tariff Act of 1930, in the unauthorized importation into the United States of certain airtight cast-iron stoves or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;
2. The appropriate remedy for such violation is to direct that such airtight cast-iron wood burning stoves which are visually similar to Jotul stoves be excluded from entry into the United States and that respondents Wood Heat, Heritage Stove Co., Hutch Manufacturing Co., Fireplace Distributors, Meteor Design International, and Great Eastern Trading Co. be ordered to cease and desist violating section 337;
3. That after considering the effect of such exclusion and cease and desist orders upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, such articles should be

excluded from entry and certain respondents ordered to cease and desist; and

4. That the bond provided for in subsection (g)(3) of section 337 of the Tariff Act of 1930 be in the amount of 200 percent ad valorem of the imported articles (ad valorem to be determined in accordance with section 402 of the Tariff Act of 1930 (19 U.S.C. 1401(a)).

Order

Accordingly it is hereby ordered--

1. That any airtight cast iron stoves which are visually similar to Jotul stoves, not otherwise authorized for importation, be excluded from entry into the United States, as provided in the exclusion order attached hereto.
2. That Wood Heat, Heritage Stove Co., Hutch Manufacturing Co., Fireplace Distributors, Meteor Design International, and Great Eastern Trading Co. cease and desist from engaging in common law trademark infringement, registered U.S. trademark infringement, passing off, or false and deceptive advertising with regard to Jotul stoves, as provided in the cease and desist orders attached hereto.
3. That the articles ordered to be excluded from entry are entitled to entry into the United States under bond in the amount of 200 percent ad valorem, as provided by section 337(g)(3)(ad valorem to be determined in accordance with section 402 of the Tariff Act of 1930 (19 U.S.C. 1401(a));
4. That notice of this Action and Order be published in the Federal Register and that this Action and Order and the opinion in support thereof be served upon each party of record to this investigation and upon the Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, and the Secretary of the Treasury; and
5. That the Commission may amend this order at any time.

By order of the Commission.

Kenneth Mason
Secretary

Issued: December 31, 1980

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

In the Matter of)
) Investigation No. 337-TA-69
CERTAIN AIRTIGHT, CAST-IRON STOVES)
)

EXCLUSION ORDER

The United States International Trade Commission, following an investigation pursuant to 19 U.S.C. section 1337(b) (1), has determined that certain cast-iron airtight woodburning stoves manufactured in Taiwan and Korea are so similar in external appearance to stoves manufactured by Jotul, Inc. of Oslo, Norway so as to cause the possibility of consumer confusion, as well as facilitate conscious deception of consumers, regarding the source and origin of such stoves. Because of the large number of foreign manufacturers, export have been involved in the importation of the Commission has determine that exclusion from entry pursuant to section 1337(d) is required to protect American consumers from deceptive practices and to protect Complainants Jotul, U.S.A., Inc. and Jotul (Norway), Inc. from unfair trade practices. Therefore, the Commission orders that such cast-iron airtight woodburning stoves which are visually similar to Jotul stoves be excluded from entry into the United States. Such exclusion shall apply in the following manner:

Fourteen foreign and eleven domestic respondents were named in the original notice of investigation. On October 5, 1979, twenty-six additional respondents were added. On October 16, 1979, one additional foreign respondent was added.

During the course of the investigation, four respondents were terminated upon proof that they

had ceased all involvement in the stove business. Twenty-five other respondents have executed consent order agreements or settlement agreements. The other respondents failed to appear and were found by the administrative law judge (ALJ) to be in default.

In her recommended determination, filed on July 7, 1980, the ALJ found that the Commission has subject matter jurisdiction in this investigation and that Kristia and the Jotul stove dealers were a "domestic industry" within the meaning of section 337. The ALJ also determined that the defaulting respondents had committed unfair acts by infringing Jotul's common law and registered trademarks, passing off and false advertising, and that their unfair acts had injured an industry, Kristia Associates and the Jotul distribution network, efficiently and economically operated in the United States. Finally, the ALJ found that the respondents' practices did not constitute restraints of trade and commerce in the United States.

On November 3, 1980, the Commission held a hearing on the ALJ's recommended determination and on relief, bonding, and the public interest. None of the respondents found to be in default by the ALJ appeared at the hearing. At the hearing, the Commission was informed for the first time that comprising the Jotul Model No. 118, then in order to be allowed entry, such stoves must:

- (1) have no bas relief in any way similar to the Jotul Model No. 118 (this relief must in any case not be used on any stove of any shape),
- (2) have no star in the vent center,
- (3) have no vertical fluting,
- (4) have no Norwegian motto,
- (5) have a name conspicuously cast on the front face of the stove,
- (6) have, if the name is suggestive of Norway or in a type size no less than one-half as great as the type size of the name, on the same side of the

stove as the name appears, a statement regarding the actual country of manufacture cast in the stove,

- (7) Have in any case a clearly visible notice of manufacturing locale cast in the exterior of the stove,

Any goods which do not meet the criteria established for each Jotul model will be refused entry.

By order of the Commission:

Kenneth R. Mason
Secretary

Issued: December 31, 1980