In the Matter of

CERTAIN ROTATABLE PHOTOGRAPH AND CARD DISPLAY UNITS, AND COMPONENTS THEREFOR

Investigation No. 337-TA-74

USITC PUBLICATION 1109

NOVEMBER 1980

United States International Trade Commission / Washington, D.C. 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

COMMISSIONERS

Bill Alberger, Chairman

Michael J. Calhoun, Vice Chairman

George M. Moore

Catherine Bedell

Paula Stern

Kenneth R. Mason, Secretary to the Commission

Address all communications to

Office of the Secretary

United States International Trade Commission

Washington, D.C. 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the matter of CERTAIN ROTATABLE PHOTOGRAPH AND CARD DISPLAY UNITS, AND COMPONENTS THEREFOR	)	Investigation No. 337-TA-74

COMMISSION DETERMINATION AND ORDER

Introduction

This report concerns the disposition by the U.S. International Trade Commission of investigation No. 337-TA-74, Certain Rotatable Photograph and Card Display Units, and Components Therefor, conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The investigation concerned alleged unfair methods of competition and unfair acts in the unauthorized importation and sale in the United States of certain rotatable photograph and card display units. On November 13, 1980, the Commission unanimously determined that there is a violation of section 337 in the importation or sale of certain rotatable photograph and card display units which infringe (1) the claim of U.S. Letters Patent 3,218,743, (2) the claim of U.S. Letters Patent 3,791,059, (3) U.S. Trademark Registration No. 838,394, and (4) the common-law trademark "Roto-Photo" and ordered that infringing devices be excluded from entry into the United States during the lives of said patents or registered trademark or during the use of the common-law trademark, except under license.

On November 13, 1980, the Commission also voted to grant Motions 74-8 and 74-9 to terminate the investigation as to respondents American Consumer, Inc.,

and Dan-Dee Imports, Inc., on the basis of settlement agreements between complainants and those respondents.

The following Commission determination and order provide for the final disposition of this investigation.

Determination

Having reviewed the record compiled in this investigation, the Commission, on November 13, 1980, unanimously determined--

(1) That Motions 74-8 and 74-9 to terminate this investigation as to respondents American Consumer, Inc., and Dan-Dee Imports, Inc., on the basis of settlement agreements, are granted;

(2) That with respect to investigation No. 337-TA-74, there is a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain rotatable photograph and card display units which infringe (1) the claim of U.S. Letters Patent 3,218,743, (2) the claim of U.S. Letters Patent 3,791,059, (3) U.S. Trademark Registration No. 838,394, and (4) the common-law trademark "Roto-Photo";

(3) That the appropriate remedy for such violation is to direct that rotatable photograph and card display units manufactured abroad which infringe the aforementioned patents or trademarks be excluded from entry into the United States during the lives of said patents or registered trademark or during the use of the common-law trademark, except under license;

(4) That, after considering the effect of such exclusion 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 rotatable photograph and card display units should be excluded from entry except under license; and

(5) 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 article (ad valorem to be determined in accordance with sec. 402 of the Tariff Act of 1930 (19 U.S.C. 1401a)).

Order

Accordingly, it is hereby ORDERED--

(1) That American Consumer, Inc., and Dan-Dee Imports, Inc., are dismissed as respondents in this investigation;

(2) That rotatable photograph and card display units and components therefor which infringe (1) the claim of U.S. Letters Patent 3,218,743, (2) the claim of U.S. Letters Patent 3,791,059, (3) U.S. Trademark Registration No. 838,394, and (4) the common-law trademark "Roto-Photo" are excluded from entry into the United States during the lives of said patents or registered trademark or during the use of the common-law trademark, except under license;

(3) That such rotatable photograph and card display units are entitled to entry into the United States under bond in the amount of 200 percent ad valorem (ad valorem to be determined in accordance with sec. 402 of the Tariff Act of 1930) from the day after this order is received by the President pursuant to section 337(g) 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;

(4) That on 1-year anniversary dates of the publication of this determination and order complainants provide to the Commission information including, but not limited to, affidavits as to (1) whether U.S. Trademark No. 838,394 continues to be in full force and effect, and (2) whether the common law trademark "Roto-Photo" continues to be used by complainants or their assigns;

(5) That notice of this determination and order be published in the Federal Register and that this determination and order, and the opinion in support thereof, be served upon each party of record in 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

(6) That the Commission may amend this order at any time.

By order of the Commission.

Kenneth R. Mason
Secretary

Issued: November 21, 1980

MEMORANDUM OPINION OF THE COMMISSION

Procedural History

The complaint forming the basis of this investigation was filed with the Commission on October 15, 1979, on behalf of Aaron H. Shneider, Skokie, Ill., and Roto-Photo Co., Inc., Chicago, Ill. (hereinafter complainants). An amendment to the complaint was filed on November 5, 1979. The complaint, as amended, alleged unfair methods of competition and unfair acts in the unauthorized importation of certain rotatable photograph and card display units, and components therefor, into the United States, or in their sale, by reason of the infringement of (1) the sole claim of complainants' U.S. Letters Patent 3,218,743 (the '743 patent), (2) the sole claim of complainants' U.S. Letters Patent 3,791,059 (the '059 patent), (3) complainants' Registered Trademark No. 838,394, and (4) complainants' common-law trademark "Roto-Photo". The complaint alleged that the effect or tendency of the alleged unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The investigation was instituted by notice published in the Federal Register of November 21, 1979 (44 F.R. 66997), on the basis of the complaint referred to above. Named as respondents were the following eight companies: Crown Craft Products, Inc., New York, N.Y.; Dan-Dee Imports, Inc., Jersey City, N.J.; American Consumer, Inc., Philadelphia, Pa.; Ben Franklin Stores, Chicago, Ill.; Etna Products Co., New York, N.Y.; American Home Toy

Parties, Inc., Acton, Mass.; Chadwick-Miller, Inc., Canton, Mass.; and Regent Export Co., Ltd., Kowloon, Hong Kong.

Upon institution, this investigation was referred to an administrative law judge (ALJ). Only four of the named respondents (American Consumer, Crown Craft, Chadwick-Miller, and Dan-Dee Imports) filed answers to the complaint in accordance with section 210.21 of the Commission's rules. And only two respondents, American Consumer and Dan-Dee Imports, participated in discovery. The ALJ found all respondents other than the latter two to be in default per section 210.21(d). American Consumer and Dan-Dee Imports are the two respondents which have signed settlement agreements with complainants, and motions to terminate them as respondents as a result of the settlement agreements were certified to the Commission (see discussion below).

A hearing on the merits in accord with 5 U.S.C. 554 was held before the ALJ on June 9, 1980. Only counsel for the complainants and the Commission investigative attorney were present. The ALJ found that complainants and the Commission investigative attorney produced sufficient evidence to establish a prima facie case with regard to a violation of section 337.

In his recommended determination, the administrative law judge recommended that the Commission determine that there is a violation of section 337 by reason of the unauthorized importation into the United States and sale therein of certain rotatable photograph and card display units by reason of the fact that these articles infringe (1) the claim of U.S. Letters Patent 3,218,743, (2) the claim of U.S. Letters Patent 3,791,059, (3) U.S. Trademark Registration No. 838,394, and (4) the common-law trademark "Roto-Photo," with the effect or tendency to substantially injure an industry, efficiently and economically operated, in the United States.

Following receipt of the recommended determination, the Commission on October 17, 1980, held a public hearing for the purposes of (1) hearing oral argument concerning the ALJ's recommended determination, and (2) hearing presentations concerning relief, bonding, and the public interest in the event the Commission determined that there is a violation of section 337. Notice of this hearing was published in the Federal Register of October 1, 1980 (45 F.R. 65087). Only complainants and the Commission investigative attorney participated in that hearing.

Also before the Commission are two motions (Nos. 74-8 and 74-9) to terminate the investigation as to two respondents on the basis of settlement agreements between complainants and the two respondents. A notice seeking public comment on these settlement agreements was issued on September 29, 1980, and published in the Federal Register of October 2, 1980 (45 F.R. 65366).

I. Motion Nos. 74-8 and 74-9 and the Settlement Agreements

As stated above, certified to the Commission by the administrative law judge were two motions, Nos. 74-8 and 74-9, to terminate this investigation as to two respondents, American Consumer, Inc., and Dan-Dee Imports, Inc., on the basis of settlement agreements. The agreements are virtually identical. The two respondents agree not to import rotary display devices like or similar to the ones being marketed by complainants.

The motions were made by complainants, the Commission investigative attorney, and the two respondents on June 10, 1980. On July 11, 1980, the ALJ recommended that the Commission grant the motions. A notice seeking public comments on the settlement agreements was issued by the Commission on

September 29, 1980, and interested persons were given until November 3, 1980, to comment. Copies of the notice and settlement agreements were also served upon the Federal Trade Commission, the Department of Justice, the Department of the Treasury, and the Department of Health and Human Services. Comments were received from only the latter three departments, each of which indicated that it had no objections to the settlement agreements.

The agreements are settlement agreements and not consent order agreements. Thus, the Commission is not a party to them, even though the Commission investigative attorney has joined the motion for termination. The settlement agreements are similar to others approved by the Commission. They contain no admissions as to patent validity, patent infringement, or the trademark issues, and each provides that the subject respondent will voluntarily cease the importation of allegedly infringing devices. The agreements permit the two respondents to utilize their present inventories of display units to fill orders generated from previous advertising, but they provide that respondents will not place additional advertising for the devices.

It is our view that the settlement agreements are in the public interest. Therefore, we have concluded that the two motions to terminate should be granted.

II. The Questions of Violation, Relief, Bonding, and the Public Interest

In his recommended determination the administrative law judge recommended that the Commission determine that there is a violation of section 337 by reason of the unauthorized importation into the United States and sale therein of certain rotatable photograph and card display units.

Discussion of the issues

Because none of the respondents participated in the hearing or filed exceptions to the ALJ's recommended determination, and because the Commission investigative attorney agreed with complainants' contentions and filed no exceptions to the recommended determination, there is no evidence in the record to contradict complainants' allegations. Therefore, the discussion below concerns the ALJ's findings and conclusions and the evidence offered in support of complainants' allegations.

Articles in question. The rotatable display units which are the subject of this investigation generally consist of a stand having a spindle rotatably supported thereon. A pair of rings, each with a spring-closable gap, are mounted on the spindle for rotation. A plurality of radially oriented sheets, pages, cards, or clear plastic sleeves are mounted on the rings. These sheets, pages, or cards contain information to be displayed, such as photographs or recipes, and are supplied by the consumer and are removable. Each page, sheet, card, recipe, or photograph is displayed by rotating the display unit to a point where the desired sheet, page, card, recipe, or photograph lies exposed to the view of the individual using the display unit. 1/

Default judgment. The ALJ has found all respondents, except the two which have signed settlement agreements (American Consumer and Dan-Dee), to have waived their rights by failing to respond and to be, in effect, in default under section 210.21(d). Such failure to respond authorizes the ALJ, without further notice to such respondents, to find the facts to be as alleged

1/ See opinion in R.D., pp. 5-6.

in the complaint and notice of investigation and to enter a recommended determination containing such findings.

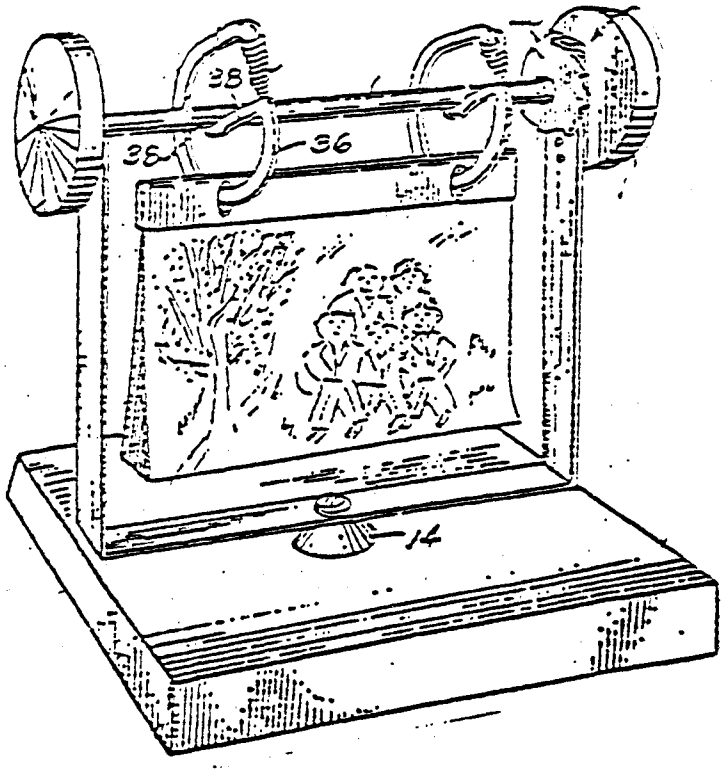
The ALJ properly referred to two earlier cases in which respondents were found to be in default--Certain Attache Cases, investigation No. 337-TA-49 (USITC Publication 955, 1979), where the respondents were found to be in default but where the Commission made a negative determination after finding insufficient evidence concerning injury, and Certain Rotary Scraping Tools, investigation No. 337-TA-62 (USITC Publication 1027, 1980), where 27 respondents were found to be in default but only 8 respondents were found to be in violation of section 337 (the other respondents could not be linked with any physical exhibits or other evidence).

Patent infringement

The investigation involved allegations regarding infringement of two patents. Aaron Shneider, one of the complainants, is the inventor and sole owner of both patents, and Roto-Photo Co., the other complainant, is a licensee of both patents. The '743 patent, issued November 23, 1965, is the basic patent on the device. The second patent, the '059 patent, was issued February 12, 1974, and is an improvement patent on the earlier device.

The presiding officer properly found the '743 patent to cover a device for storing and displaying photographs, the sole claim of which is directed to a device having a base; an upright member secured to the base; a rotatable shaft secured to the upright member; rings, each having a gap and a radial arm, and each secured to the shaft by its radial arm; transparent pages held

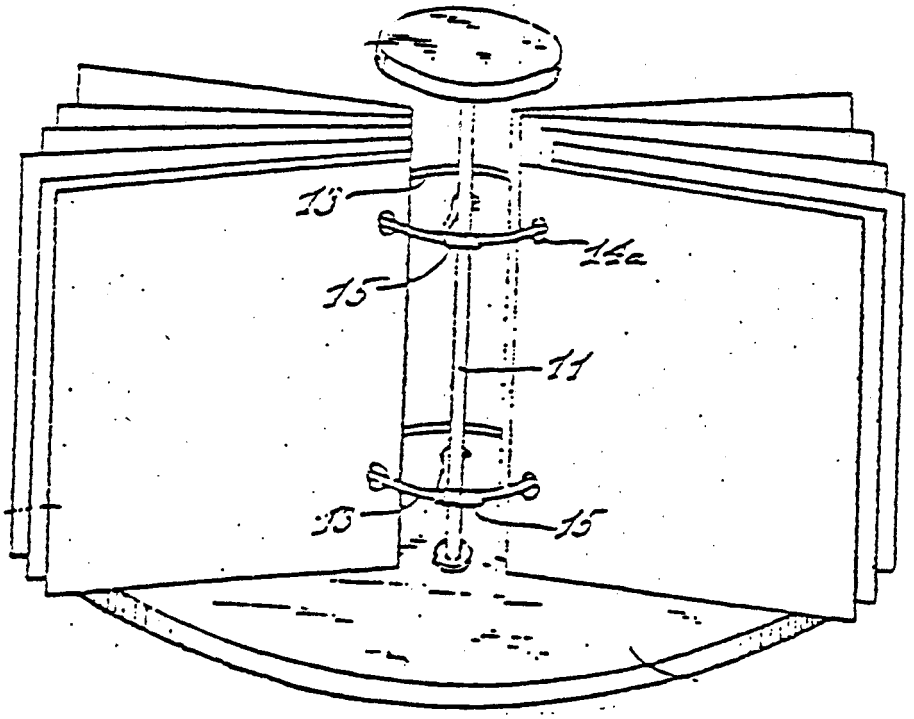
together by a binder element forming a book which slides about the periphery of the rings; and a spring attached to each ring to close the gap in the ring, thereby retaining the pages on the ring. 1/ A drawing of this device is set forth below.



The ALJ properly found the '059 patent, the improvement patent, to cover essentially a ring structure for use in a rotary card file, the sole claim of which calls for a ring having a gap and a radial arm attached to a spindle, with the improvement being a spring closure which is attached to the ring by

1/ Opinion in R.D., p. 6.

an eye, or single loop of the spring, at the radial arm end of the ring, the other end of the spring being slidable over the opposing end of the ring to close the gap between the two ends of the ring. 1/ A drawing of this device is set forth below.



The ALJ at the outset of his opinion correctly referred to 35 U.S.C. 282, which provides that a duly issued patent is to be presumed valid and that the burden of establishing invalidity is to rest on the party asserting

---

1/ Id.

invalidity. 1/ He found that no evidence was offered by respondents to rebut the presumption of validity with respect to either patent. 2/

The ALJ found the claim of complainants' '743 patent to read on sample devices from five of the eight respondents--American Consumer, Dan-Dee Imports, Chadwick-Miller, Crown Craft Products, and Regent Export (Dan-Dee's Hong Kong supplier). 3/ However, he concluded that there was insufficient evidence to make a determination with regard to the three other respondents--Ben Franklin Stores, American Home Toy Parties, and Etna Products. 4/ No samples from these latter three firms were submitted, and no connection between the samples submitted and these parties was demonstrated. 5/

In finding infringement of the '743 patent by five of the respondents, the ALJ properly applied the doctrine of equivalents. 6/ That doctrine provides that where an article utilizes substantially the same means to attain substantially the same results in substantially the same way as that claimed in a patent, such article infringes the patent. Graver Tank v. Linde Air Products Co., 339 U.S. 605 (1950).

The doctrine of equivalents was applied because (1) none of the four sample imported devices entered as exhibits at the hearing before the ALJ contained a book member, and (2) one of the four, the Crown Craft device,

---

1/ Id., p. 7.
2/ Id.
3/ Findings of fact 21-24, R.D., p. 20.
4/ Finding of fact 25, R.D., p. 20.
5/ Opinion in R.D., p. 9.
6/ Id., p. 7.

utilized a spring snap instead of a coil spring. 1/ The book member is a plurality of plastic sleeves secured at the top of a binding element. 2/ The ALJ found it to be included in the claim of the '743 patent because plastics in the early 1960's were brittle and inflexible. 3/ However, the ALJ found that as plastics technology advanced, it became apparent to persons ordinarily skilled in the art of constructing rotatable display devices that single plastic sleeves were more expedient than plastic pages secured by a binding element. 4/ He found the element of the book member to have little influence on the novelty of the patent 5/ and that the plastic sleeves perform the same function and provide the same result as a book member. 6/ Therefore, he concluded that the limitation in the claim of the '743 patent pertaining to the book member did not lead to the granting of the patent. 7/

The patented device and the samples of devices imported by American Consumer, Dan-Dee Imports, and Chadwick-Miller were found to have effected a closure of the space at the end of the ring member by means of a coiled spring. However, the Crown Craft device was found to have attained this closure in a substantially similar manner by utilizing a spring steel snap, which he concluded to be the functional equivalent of the coiled spring. 8/

1/ Finding of fact 14, R.D., p. 18; and finding of fact 22, R.D., p. 20.
2/ Finding of fact 14, R.D., p. 18.
3/ Finding of fact 15, R.D., p. 19.
4/ Id.
5/ Finding of fact 16, R.D., p. 19.
6/ Findings of fact 17-18, R.D., p. 19.
7/ Opinion, R.D., p. 8.
8/ Finding of fact 22, R.D., p. 20, and opinion, R.D., p. 8.

The ALJ correctly found four of the respondents (American Consumer, Dan-Dee Imports, Chadwick-Miller, and Regent Export) to be literally infringing the '059 patent, the improvement patent which covers the ring structure for use in a rotary card file. 1/ He also found Crown Craft, which uses a steel spring snap rather than a closely wound spring as a closer, to be infringing the patent because he concluded that the snap and spring are functionally equivalent under the doctrine of equivalents. 2/ As in the case of the '743 patent, the ALJ properly found insufficient evidence to support a determination of infringement of the '059 patent with respect to the other three respondents. 3/

U.S. Trademark Registration No. 838,394. The ALJ found that complainant Roto-Photo Co. is the owner and registrant of U.S. Trademark Registration No. 838,394, registered November 7, 1967. 4/ He found that complainant's product and packaging depicted the trademark, which consists of the word "Roto-Photo" and two circular arrows in clockwise orientation 5/--see drawing below. Although he found that the marks used by the imported devices do not

ROTO-PHOTO

1/ Findings of fact 27-37, R.D., pp. 21-23; opinion, R.D., p. 9.
2/ Findings of fact 38, R.D., p. 23; opinion, R.D., p. 10.
3/ Finding of fact 39, R.D., p. 23; opinion, R.D., p. 10.
4/ Finding of fact 40, R.D., p. 23.
5/ Finding of fact 42, R.D., p. 23.

utilize clockwise-oriented arrows, he found that the marks "Roto-Photo" and "Roll-A-Photo" (the latter used by American Consumer, Dan-Dee Imports, and Chadwick-Miller) both look and sound alike and are likely to cause customer confusion. 1/ Likelihood of customer confusion was properly found to be the test of trademark infringement. 2/

The ALJ properly found the designation used by Crown Craft Products--"Rotary-Photo-Holder"--to be "not as convincingly similar" as the designation used by the four aforementioned respondents. 3/ However, in light of sworn expert testimony by a Mr. Kiel, who testified as an expert in trademark law, and the default of respondent, he concluded that the designation infringed the trademark and was not simply a generic description of the product. 4/ He correctly found that the designation "Rotary-Photo-Holder" was likely to cause confusion to customers. 5/ The ALJ also correctly applied the finding of trademark infringement to Regent Export, since that firm was connected with the importation of one of the samples, but did not make a finding as to Ben Franklin Stores, American Home Toy Parties, or Etna Products since there were no samples or evidence of their alleged use of the trademark. 6/

Common-law trademark. The ALJ properly applied the same rationale to the common-law trademark "Roto-Photo," which complainant has used since 1962. 7/

1/ Findings of fact 43-44, R.D., p. 24, opinion, R.D., p. 11.
2/ Opinion, R.D., p. 10.
3/ Id., p. 11.
4/ Id.
5/ Finding of fact 48, R.D., p. 24
6/ Opinion, R.D., pp. 11-12.
7/ Id., p. 12, and finding of fact 49, R.D., pp. 24-25.

He thus found that the five respondents infringing the registered trademark were also infringing the common law trademark. 1/

Domestic industry. The ALJ properly found the domestic industry to comprise Roto-Photo Co. and its component suppliers to the extent they produce rotatable photograph and card display units in accord with the teachings of the two patents. 2/ He found that the industry, while small in scale, is efficiently and economically operated, and that there was no evidence presented to the contrary. 3/

Injury. The ALJ properly found "substantial injury to the domestic industry, or at least the tendency thereof." 4/ He found that the evidence, which was unrebutted, showed lost customers, lost sales, unemployment, and lost profits. 5/ He correctly concluded that it was fair to infer that the "malaise" of complainant was due to the unfair foreign competition, noting that there were no other domestic manufacturers of the product. 6/ More specifically, he found that complainant lost three major accounts between 1976 and 1979; 7/ that two of complainant's customers have purchased the imported items; 8/ that Roto-Photo has unsuccessfully solicited business from firms purchasing the imported articles; 9/ that complainant's employees worked

---

1/ Opinion, R.D., p. 12.
2/ Findings of fact 50-53, R.D., p. 25; opinion, R.D. p. 12.
3/ Finding of fact 59, R.D., p. 26; opinion, R.D., p. 13.
4/ Opinion, R.D., p. 13.
5/ Id.
6/ Id.
7/ Finding of fact 65, R.D., p. 27.
8/ Findings of fact 67-68, R.D., p. 28.
9/ Finding of fact 68A, R.D., p. 28.

* * * hours in 1976 and * * * hours in 1977, but only * * * hours in 1978 and * * * hours in 1979; 1/ that complainant's products sell for approximately $15, whereas the imported products sell for $3 to $6; 2/ that complainant's sales declined from * * * in 1977 to * * * in 1978, and * * * in 1979; 3/ that complainant's sales volume in its Roto-Photo Plex 110 unit has fallen off approximately 50 to 55 percent "due to heavy competition fostered by the imported devices;" 4/ that complainant's workforce dropped by 70 percent from 1976 to 1979 (from 10 persons to 3); 5/ and that complainant operated at a profit of about * * * percent in 1976-78, but at a loss of * * * percent in 1979. 6/

The ALJ also found that foreign producers in Hong Kong have a large production capacity for the subject devices; 7/ that complainant could meet the full U.S. demand; 8/ that data from three importer respondents showed imports of *** for the period January 1, 1976, to early 1980; 9/ and that one respondent importer's gross sales of the subject devices in a 1-1/2 year period exceeded Roto-Photo's total sales for the period ***. 10/

Determination

After reviewing the record in this proceeding and the recommended determination, the submissions of the parties, and the transcript of the October 17

1/ Finding of fact 69, R.D., p. 28.
2/ Finding of fact 71, R.D., p. 28.
3/ Finding of fact 72, R.D., p. 29.
4/ Finding of fact 74, R.D., p. 29.
5/ Finding of fact 75, R.D., p. 29.
6/ Finding of fact 76, R.D., p. 29.
7/ Finding of fact 77, R.D., p. 29.
8/ Finding of fact 79, R.D., p. 30.
9/ Finding of fact 80, R.D., p. 30.
10/ Finding of fact 81, R.D., p. 30.

hearing. we have determined that we should adopt the recommendations of the ALJ with respect to patent validity and infringement, trademark infringement, and injury, and thus find a violation of section 337. However, we have found a violation only with respect to Chadwick-Miller, Crown Craft Products, and Regent Export in view of our granting of motions Nos. 74-8 and 74-9 to terminate American Consumer and Dan-Dee Imports.

Relief, bonding, and the public interest factors

Having found a violation of section 337, the Commission must address the issues of relief, bonding, and the public-interest factors.

Relief. Section 337(d) provides that the Commission, if it finds a violation, "shall" direct that the violating articles be excluded from entry into the United States unless, after considering certain enumerated public interest factors (discussed below), it determines that the articles should not be excluded. Section 337(f) provides that the Commission may issue and cause to be served on any person violating the section an order directing the person to cease and desist from engaging in the unfair methods or acts unless, after considering the public-interest factors, it determines that such an order should not be issued.

Complainants seek the issuance of an order excluding respondents' allegedly infringing devices from entry. 1/ The Commission investigative attorney supports this request. 2/ We believe that an exclusion order

---

1/ Transcript of Oct. 17, 1980, hearing, p. 8.
2/ Id., p. 21.

is the appropriate remedy in this case because we are of the view that an exclusion order, which provides an in rem remedy, is an effective remedy when several respondents have been found to be in violation of section 337.

Bonding. Since we have determined that an exclusion order is to be issued, we must then, pursuant to section 337(g)(3), set a bond for such infringing articles entered during the period the Commission's determination is pending before the President. The Commission's rules provide that the Commission is to determine a bond "taking into consideration . . . the amount which would offset any competitive advantage resulting from" the violation (19 CFR 210.14(a)(3)). The Commission has generally set a bond equal to the difference between the selling prices of the domestic and imported articles. 1/

Complainants and the Commission investigative attorney proposed a bond in the amount of 200 percent, based on the price difference of approximately $10 between the domestic and imported articles (about $15 for the domestic article and about $5 for the imported article). 2/

1/ See, for example, In the Matter of Certain Roller Units, investigation No. 337-TA-44, at p. 12. But compare In the Matter of Doxycycline, investigation No. 337-TA-3, USITC Publication 964, April 1979, at p. 21 (concurring opinion of Commissioner Alberger), and In the Matter of Certain Thermometer Sheath Packages, investigation No. 337-TA-56, USITC Publication 992, July 1979, at p. 30, where a bond of 10 percent representing a reasonable royalty was found appropriate. (In the latter case, the price of the imported article was found to be higher than the price of the domestic article.)

2/ Transcript of Oct. 17, 1980, hearing, pp. 20, 22-23.

We have concluded that a bond of 200 percent would offset any competitive advantage enjoyed by respondents. Complainants appear to have advantages in marketing and in the fact that their product is well known. Respondents' only present advantage seems to be price. We think that a bond equalizing prices would more than overcome any advantage respondents now have.

Public-interest factors. Subsections (d) and (f) of section 337 provide that relief is to be ordered "unless, after considering the effect of such exclusion (order) upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers," it finds that such relief should not be ordered. In determining whether the public interest precludes the granting of relief, the Commission has considered such factors as the domestic industry's ability to supply the market in the absence of imports, the availability of substitute products, previous anticompetitive behavior of the patentholder, and the industry's likely pricing behavior in the absence of imports. 1/

At the hearing, counsel for complainants asserted that Roto-Photo is "fully capable" of satisfying the needs for the product in the United States. 2/ He said that there was evidence in the record to the effect that Roto-Photo could obtain parts for and assemble all the display devices which

---

1/ See Doxycycline, supra, at pp. 19-21; Thermometer Sheath Packages, supra, at pp. 28-29; and In the Matter of Certain Automatic Crankpin Grinders, investigation No. 337-TA-60, USITC Publication 122, December 1979, at pp. 17-21. In the latter case, the Commission determined that the public interest precluded the imposition of a remedy because it found that the domestic industry could not supply the demand for new orders within a commercially reasonable length of time. The devices are used in the production of smaller, more energy efficient automobiles. See pp. 18-19.

2/ Transcript of Oct. 17, 1980, hearing, p. 12.

the market requires. 1/ He also asserted that there are alternative price-competitive photo display units on the market which do not infringe complainants' device. 2/ Complainants' counsel produced two such alternative devices and showed them to the Commission. 3/ He asserted that the public interest was thus protected and would not be injured by an exclusion order. 4/ The Commission investigative attorney agreed. 5/

We have concluded that the issuance of an exclusion order in this case is not precluded by the public-interest considerations.

1/ Id., pp. 19-20.
2/ Id., p. 20.
3/ Id.
4/ Id.
5/ Id., p. 22.