

In the Matter of

CERTAIN MINIATURE HACKSAWS

Investigation No. 337-TA-237



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JANUARY 1987

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Washington, DC 20436

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Investigation No. 337-TA-237

NOTICE OF COMMISSION FINAL DETERMINATION AND ISSUANCE OF
GENERAL EXCLUSION ORDER AND FIVE CEASE AND DESIST ORDERS

AGENCY: U.S. International Trade Commission.

ACTION: Determination of violation of section 337, issuance of general
exclusion order and five cease and desist orders.

SUMMARY: Having reviewed in part the initial determination (ID) in the
above-captioned investigation, the Commission has determined that there is a
violation of section 337 of the Tariff Act of 1930. In addition, the
Commission has determined that a general exclusion order and cease and desist
orders directed to respondents Alltrade, Inc.; M&S Krasnow, Inc.; the Disston
Company, Inc.; Menard, Inc.; and Borsumij Wehry (U.S.A.), Inc., pursuant to
sections 337(d) and (f) of the Tariff Act of 1930 (19 U.S.C. §§ 1337(d) and
(f)) are the appropriate remedies for the section 337 violation found to exist;
that the public interest considerations enumerated in sections 337(d) and (f)
do not preclude such relief; and that the amount of the bond during the
Presidential review period under section 337(g) shall be 215 percent of the
entered value of the imported articles.

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Office of the General
Counsel, U.S. International Trade Commission, telephone 202-523-1626.

SUPPLEMENTAL INFORMATION: This investigation was instituted on January 8,
1986, 51 Fed. Reg. 1860 (1986). On October 15, 1986, the presiding
administrative law judge (ALJ) issued an ID that there is a violation of
section 337 in the importation and sale of certain miniature hacksaws.
Respondents Alltrade, Inc.; Menard, Inc.; Borsumij Wehry (U.S.A.), Inc.; and
M&S Krasnow, Inc. (petitioning respondents), petitioned for review of certain
parts of the initial determination pursuant to section 210.54 of the
Commission's rules. Complainant, The Stanley Works, and the Commission
investigative attorney filed responses. The Commission received no comments
from other Government agencies.

After examining the petition for review and the responses thereto, the Commission concluded that the following issues warranted review:

1. Whether U.S. Letters Patent 3,756,298 is invalid as obvious pursuant to 35 U.S.C. § 103; and
2. Whether U.S. Letters Patent Des. 228,236 is invalid as obvious pursuant to 35 U.S.C. § 103.

51 Fed. Reg. 44535 (1986).

The Commission requested written submissions by the parties to the investigation and interested Government agencies on the legal issues under review as well as on remedy, the public interest, and bonding.

The Commission received briefs from complainant, the petitioning respondents, and the Commission investigative attorney (IA) on the issues under review and from complainant and the IA on remedy, the public interest, and bonding. The Commission received no comments from other Government agencies.

Upon consideration of the written submissions and the entire record in this investigation, the Commission determined to affirm the ID with respect to the questions under review, as modified by the Commission's opinion. In addition, the Commission rendered determinations on the questions of remedy, bonding, and the public interest.

The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in sections 210.53-.56 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.53-.56).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161. The Commission Opinion in support of its determination will issue shortly. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.


Kenneth R. Mason
Secretary

Issued: January 15, 1987

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

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COMMISSION ACTION AND ORDER

BACKGROUND

On December 9, 1985, a complaint was filed with the Commission under section 337 of the Tariff Act of 1930 on behalf of complainant The Stanley Works (Stanley) of New Britain, Connecticut. The complaint, as amended, alleged that certain miniature hacksaws imported and sold by respondents infringed claims 1 through 9 of U.S. Letters Patent 3,756,298 (the '298 patent) and the single claim of U.S. Letters Patent Des. 228,225 (the '225 design patent), both of which patents are owned by complainant Stanley. The complaint requested that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and cease and desist orders.

On January 8, 1986, the Commission issued notice of an investigation to determine whether there is a violation of section 337 in the unlawful importation and sale of certain miniature hacksaws, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The notice named 14 firms as respondents. The notice was served on the parties on January 8, 1986, and published in the Federal Register on January 15, 1986. 51 Fed. Reg. 1860.

Complainant Stanley moved to terminate the investigation as to respondent TDK on the grounds that TDK was improperly named. That motion was granted by the administrative law judge (ALJ) on March 17, 1986. On March 28, 1986, the Commission issued notice of its decision not to review the initial determination (ID) terminating the investigation as to TDK. On March 5, 1986, Stanley moved to add ten additional respondents. The ALJ issued an ID granting the motion on April 7, 1986. On May 9, 1986, the Commission issued notice of its decision to review that ID. 51 Fed. Reg. 17681. On July 14, 1986, the Commission issued notice of its decision to affirm in part and reverse in part the ID adding the ten respondents. The only one of the ten firms added as a respondent was Borsumij Wehry (USA), Inc., successor in interest of an earlier named respondent (Miller).

Respondents Scotty's and U.S. General were terminated on the basis of consent orders on March 7, 1986. Respondents Yuo Noun, ENI, and Kyuwn were terminated on the basis of consent orders on July 11, 1986. Respondents Alltrade, Krasnow, Oxwall, Menard, and Borsumij entered appearances and participated in the investigation through counsel, though Oxwall was later terminated on the basis of a consent order on August 6, 1986. The ALJ found respondent Disston in default on July 18, 1986, and respondents Lion and Maxwell in default on August 8, 1986, because those three respondents failed to respond to the complaint and notice of the investigation and failed to appear at the evidentiary hearing.

The evidentiary hearing before the ALJ was held from July 14 to 18, 1986. Respondents Alltrade, Krasnow, Menard, and Borsumij, as well as complainant Stanley, and the Commission investigative attorney (IA) participated. On October 15, 1986, the ALJ issued her ID finding a violation of section 337 in the importation and sale of respondents' miniature hacksaws.

Specifically, the ALJ found that both the '298 patent and the '225 design patent are valid and enforceable. In addition, the ALJ determined that certain miniature hacksaws manufactured abroad and imported into the United States by respondents and other entities infringe complainant's utility and design patents. The ALJ concluded that the importation and sale of these infringing miniature hacksaws has the effect and tendency to substantially injure an efficiently and economically operated domestic industry.

On October 24, 1986, respondents Alltrade, Menard, Borsumij, and Krasnow petitioned for review of the ID on the questions of patent validity and effect and tendency to substantially injure. Complainant and the IA filed responses in opposition to the petition for review. The Commission received no comments from other Government agencies.

Based upon these submissions and the record in this investigation, the Commission determined to review two issues presented by the ID relating to the validity of the '298 utility patent and the '225 design patent. These issues were:

1. Whether U.S. Letters Patent 3,756,298 is invalid as obvious pursuant to 35 U.S.C. § 103; and
2. Whether U.S. Letters Patent Des. 228,236 is invalid as obvious pursuant to 35 U.S.C. § 103.

The Commission has received written submissions on the validity issues from complainant, respondents, and the IA, and on remedy, the public interest, and bonding from complainant and the IA.

ACTION

Having determined that these issues are properly before the Commission, and having reviewed the written submissions on the issues under review, as

well as on remedy, the public interest and bonding and those portions of the record relating to those issues, the Commission has determined to affirm the ID as modified by the Commission's opinion herein, on the validity questions under review. In addition, the Commission has determined to issue a general exclusion order prohibiting entry into the United States of miniature hacksaws that infringe claims 1-9 of U.S. Letters Patent 3,756,2989, and/or the claim of U.S. Patent Des. 228,225, except where such importation is licensed by the patent owner.

The Commission has also determined to issue cease and desist orders prohibiting respondents Alltrade, Menard, Krasnow, Disston, and Borsumij from selling and/or offering for sale certain imported miniature hacksaws in violation of section 337 of the Tariff Act of 1930.

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 215 percent of the entered value of the articles concerned.

ORDER

Accordingly, it is ORDERED that:

1. Miniature hacksaws that infringe claims 1-9 of U.S. Letters Patent 3,756,298, and/or the claim of U.S. Patent Des. 228,225 are excluded from entry into the United States for the remaining term of the patents, except where such importation is licensed by the patent owner.

2. The articles ordered to be excluded from entry into the United States shall be entitled to entry under bond in the amount of 215 percent of the entered value of the imported 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 (19 U.S.C. § 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 receipt thereof.
3. 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.
4. The Secretary shall publish notice of this action and order in the Federal Register; and
5. 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. § 211.57).

By Order of the Commission.



Kenneth R. Mason
Secretary

Issued: January 15, 1987

(E) "United States" shall mean the fifty States, the District of Columbia and Puerto Rico.

(F) "Imported miniature hacksaws" shall mean miniature hacksaws that are manufactured in any country other than the United States for shipment or export to the United States for resale in the United States.

(G) "Infringing imported miniature hacksaws" shall mean imported miniature hacksaws that infringe claims 1-9 of U.S. Letters Patent 3,756,298 and/or the claim of U.S. Patent Des. 228,225.

II

(Applicability)

The provisions of this Cease and Desist Order shall apply to Respondent and to its principals, stockholders, officers, directors, employees, agents, licensees, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and all those persons acting in concert with them who received actual notice of this Order in accordance with section VI hereof.

III

(Conduct Prohibited)

The following conduct of respondent in the United States is prohibited by this Order:

1. Respondent shall not, for the remaining term of U.S Letters Patent 3,756,298, market, distribute, sell, or offer for sale any imported miniature hacksaws that infringe claims 1-9 of U.S. Letters Patent 3,756,298.