



The purpose of the Commission determination, order, and opinions are to provide for the final disposition of the Commission's investigation of certain novelty glasses.

#### Determination

Having reviewed the record compiled in this investigation, including (1) the submissions filed by the parties, (2) the recommended determination of the administrative law judge, and (3) the transcript of the public hearing before the Commission on June 14, 1979, the Commission on June 27, 1979 (Chairman Parker dissenting), determined--

1. That with respect to both respondents in investigation No. 337-TA-55 there is a violation of section 337 of the Tariff Act of 1930, as amended, in the importation into and sale in the United States of certain novelty glasses 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. That the appropriate remedy for such violation is to direct that novelty glasses manufactured abroad which unlawfully copy the trade dress of Complainants' novelty glasses be excluded from entry into the United States;

3. 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 novelty glasses should be excluded from entry; 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 482 percent ad valorem, f.o.b. Hong Kong.

#### Order

Accordingly, it is hereby ordered--

1. That novelty glasses manufactured abroad which unlawfully copy the trade dress of complainants' novelty glasses are excluded from entry into the United States;<sup>4</sup>

2. That every 6 months complainants provide to the Commission information, including, but not limited to affidavits and samples, as to whether they are continuing to use the trade dress, as described in note 4, below;

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<sup>4</sup>Complainants' trade dress consists of the following:

These glasses are tumblers (approximately 3-1/2 inches in height and 3-1/2 inches in diameter) made of a clear plastic or acrylic substance and constructed with a false bottom. Inside the false bottom is either a colorful facsimile of a gambling game or rocks. Those glasses with a game bear a label describing the enclosed game ("Craps," "Big Six," "Roulette," or "Jackpot") in block-type lettering approximately three-fourths of an inch in height. Those glasses with the false bottom filled with rocks bear the label "On the Rocks" in the same lettering design and of the same size as the game-type glasses. The lightweight cardboard boxes (approximately 7-3/8 inches x 7-3/8 inches x 3-5/8 inches) in which the game-type glasses are sold hold four glasses and utilize a black background with color, photographic reproductions of the enclosed glasses. The color photographs are of the glasses from the side and top perspectives.

Exhibits of complainants' trade dress, which the Commission considered in arriving at its determination, may be examined at the Office of the Secretary during official business hours. Photographs of complainants' trade dress will be sent to the Customs Service in order to facilitate the administration of this order.

3. That the novelty glasses ordered to be excluded from entry are entitled to entry into the United States under bond in the amount of 482 percent ad valorem, f.o.b. Hong Kong, from the day after this order is received by the President pursuant to section 337(g) of the Tariff Act of 1930, as amended, 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 such date of receipt;

4. That this order be published in the Federal Register and that this order, and the opinions in support thereof, be served upon each party of record in this investigation and' upon the U.S. Department of Health, Education, and Welfare,,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.

Order of the Commission.

Kenneth R. Mason  
Secretary

Issued: July 11, 1979