

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)

CERTAIN HOME VACUUM PACKAGING)
MACHINES)

Inv. No. 337-TA-496

ORDER

The Commission instituted this investigation on August 18, 2003, based on a complaint filed by Tilia, Inc. and Tilia International, Inc., both of San Francisco, California. 68 *FR* 49521 (August 18, 2003). The complaint alleges violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain home vacuum packaging machines by reason of infringement of claims 3, 4, 6, 24, 25, and 34 of U.S. Patent No. 4,941,310. There are five respondents. Two of these, The Rival Company and The Holmes Group, Inc., recently filed a joint motion with complainants to terminate the investigation as to them on the basis of a settlement agreement. That motion has been granted by the presiding administrative law judge (“ALJ”) and is currently pending before the Commission. The other three respondents are Applica, Inc., Applica Consumer Products, Inc., and ZeroPack Co., Ltd.

On January 12, 2004, the ALJ issued Orders Nos. 38 and 39. In Order No. 38, the ALJ granted the motion of respondent Applica Consumer Products, Inc. (“Applica”) to approve requests for international judicial assistance in procuring evidence of the inventive activities of an Italian national, Luigi Abate, and issued letters rogatory addressed to the judicial authorities of Italy. The letters rogatory seek to have those authorities compel the attendance of three Italian citizens, including Mr.

Abate, at the evidentiary hearing to be held in this investigation to give live testimony and to have Mr. Abate submit certain documents and things. As an alternative, should the Italian authorities deny execution of the letters rogatory, the ALJ also issued a letter of request under the Hague Evidence Convention seeking the deposition testimony of Mr. Abate and the production of certain documents and things from him and the Italian firm with which he is associated, Flaem Nuova S.p.A, the deposition to be conducted by and through the appropriate judicial authorities of the Italian government. The ALJ transmitted the three letters rogatory to counsel for respondent Applica for transmittal to the appropriate authorities of the Italian government through diplomatic channels, *i.e.*, through the State Department. The ALJ transmitted the letter of request to the Office of the Secretary “for appropriate action in accordance with the Hague Convention.”

In Order No. 39, the ALJ granted Applica’s motion to approve requests for international judicial assistance in procuring evidence concerning sales of vacuum packaging machines in Italy by an Italian firm, Brevetti van Berkel S.p.A., issuing a letter of request under the Hague Evidence Convention asking that Brevetti and its managing director, Mr. Baldi Vincenzo, be compelled by the appropriate judicial authorities of Italy to produce documents and provide testimony concerning vacuum packaging machines sold in 1987. The ALJ transmitted the letter of request to the Office of the Secretary “for appropriate action in accordance with the Hague Convention.”

On January 21, 2004, the Commission issued an order temporarily suspending the letters rogatory and letters of request issued in Orders Nos. 38 and 39, and requesting the parties to address certain questions as to the Commission’s authority to issue letters rogatory and letters of request under

the Hague Evidence Convention, as well as certain statements and undertakings in the letters rogatory which appeared to be questionable. The questions posed were:

1. Upon what authority may the Commission issue letters rogatory?
2. Upon what authority may the Commission issue letters of request under the Hague Evidence Convention?
3. With regard to the letters rogatory issued in Order No. 38,
 - a. What is the basis for the statement that the Commission is an “administrative court”?
 - b. What is the basis for the statement that the Commission “has authority to submit a Letter Rogatory under 28 U.S.C. 1651”? In this connection, the Commission notes that 28 U.S.C. 1651 refers to writs of the “Supreme Court and all courts established by Act of Congress.”
 - c. Under what authority may the Commission “provide similar assistance to judicial authorities of the Italian Republic”?
 - d. Under what authority may the Commission “reimburse the judicial authorities of the Italian Republic for costs incurred in executing this letter rogatory”?
4. With regard to the letters rogatory issued in Order No. 38, under what authority may the Commission request the judicial authorities of Italy to compel the attendance of Italian citizens, resident in Italy, to appear at the evidentiary hearing in this investigation? What precedent exists for such a request?
5. Under what authority may the Commission issue a conditional letter of request as was done in Order No. 38?

All parties filed responses to the Commission’s order.

Having considered the parties’ responses and the relevant portions of the record, the Commission has determined that the three letters rogatory issued in Order No. 38 should not be transmitted for execution inasmuch as an insufficient basis has been shown for the specific international

judicial assistance requested therein. Further, the letters contain statements concerning the Commission which are incorrect or problematic.¹ The Commission has also determined that the two letters of request issued in Orders Nos. 38 and 39 may be transmitted to the Central Authority of Italy for execution if they are amended to indicate that the Commission investigative attorney assigned to this investigation is a party to the investigation.

Accordingly, it is hereby **ORDERED THAT:**

1. The letters rogatory issued in Order No. 38 are recalled and may not be transmitted for execution.
2. The letters of request issued under the Hague Evidence Convention in Orders Nos. 38 and 39 may be transmitted to the Central Authority of Italy for execution if they are amended to indicate that the Commission investigative attorney assigned to this investigation is a party to the investigation. The Secretary shall return the unamended letters of request to Applica for amendment and for approval of the amended letters of request by the presiding administrative law judge.
3. On receipt of amended letters of request approved by the presiding administrative law judge which are in conformity with the Hague Evidence Convention, the Secretary shall transmit them to the Central Authority for Italy for execution. Alternatively, at the option of Applica, on receipt of amended letters of request approved by the presiding administrative law judge which are in conformity with the Hague Evidence Convention, the Secretary shall authenticate the signature of the administrative law judge thereon under the seal of the Commission

¹ Specifically, the Commission is not a “court” as that term is usually used in the United States and has no authority under 28 U.S.C. 1651, which by its terms is limited to “[t]he Supreme Court and all courts established by Act of Congress.” Whether the Commission may undertake to “provide similar assistance to judicial authorities of the Italian Republic” or “reimburse the judicial authorities of the Italian Republic for costs incurred in executing” a letter rogatory depends in the first instance on whether the Commission is authorized to issue letters rogatory, a question which we need not and do not reach.

and return the authenticated amended letters of request to Applica for transmittal by Applica to the Central Authority of Italy for execution. In any case, the amended letters of request shall continue to provide that Applica, Inc. and Applica Consumer Products, Inc., will directly reimburse the executing judicial authority of Italy for any costs of execution incurred under Articles 14 and 26 of the Hague Evidence Convention.

4. The Secretary shall serve a copy of this Order upon each party to the investigation.

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: March 24, 2004