

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)	
)	
CERTAIN INK MARKERS AND)	Inv. No. 337-TA-522
PACKAGING THEREOF)	
)	

NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL DETERMINATION FINDING A VIOLATION OF SECTION 337; SCHEDULE FOR WRITTEN SUBMISSIONS ON REMEDY, BONDING, AND THE PUBLIC INTEREST

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 30) issued by the presiding administrative law judge (“ALJ”) finding a violation of section 337 in the above-captioned investigation. The Commission has set forth a schedule for submitting written submissions on the issues of remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 205-3095. Copies of all nonconfidential documents filed in connection with this investigation are or will be 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, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission’s TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: This trademark-based section 337 investigation was instituted by the Commission based on a complaint filed by Sanford, L.P. of Freeport, Illinois (“Sanford” or “complainant”). 69 *Fed. Reg.* 52029 (August 24, 2004). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink markers and packaging thereof by reason of infringement of U.S. Trademark Registration Nos. 807,818 and 2,721,523 and also by reason of infringement of trade dress. The notice of investigation identified 12 respondents. On November 10, 2004, the ALJ granted a motion to add three

respondents to the investigation. The Commission determined not to review the ID. 69 *Fed. Reg.* 75342 (December 16, 2004). Each respondent was accused of violating Section 337 by infringing Sanford's trade dress. Certain respondents were also accused of infringing one or more of complainant's registered trademarks.

Between November 15, 2004, and June 1, 2005, the ALJ issued several IDs terminating various respondents on the basis of settlement agreements or consent orders. During that time period other IDs were issued finding several other respondents in default. No petitions for review of any of these IDs were filed, and the Commission determined not to review any of them, thereby allowing them to become the Commission's determinations.

On April 19, 2005, Sanford filed a motion seeking a summary determination of violation and issuance of a general exclusion order and a cease and desist order. On July 25, 2005, the ALJ issued Order No. 30, an initial determination (ID) finding violations of Section 337 and recommending a general exclusion order and a cease and desist order. The ALJ also recommended the issuance of a general exclusion order. He further recommended that the bond permitting temporary importation during the Presidential review period be set at 100 percent of the value of the infringing imported product.

On August 5, 2005, Sanford filed a petition for review of one aspect of Order No. 30. Specifically, Sanford sought review of the ID's finding that complainant had failed to show importation with respect to defaulted respondent LiShui Laike Pen Co., Ltd. ("LiShui Laike"). The Commission investigative attorney (IA) opposed Sanford's petition for review. On August 25, 2005, complainant filed a motion for leave to file a reply to the IA's petition for review. The Commission has determined to deny that motion.

The Commission has determined not to review Order No. 30, thereby allowing it to become the Commission's final determination.

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, it should so indicate and provide information establishing that activities involving other types of entry are either adversely affecting it, or are likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider in this investigation include the effect that an exclusion order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the

aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the ALJ's July 25, 2005, recommended determinations on the issues of remedy and bonding. Complainant and the Commission's investigative attorney are also requested to submit proposed orders for the Commission's consideration. Complainant is further requested to state the HTSUS numbers under which the infringing goods are imported. Main written submissions and proposed orders must be filed no later than close of business on September 16, 2005. Reply submissions, if any, must be filed no later than the close of business on September 23, 2005. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons that the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and sections 210.42 and 210.50 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42 and 210.50.

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: September 8, 2005