

In the Matter of

CERTAIN AIRTIGHT CAST-IRON STOVES

Investigation No. 337-TA-69



USITC PUBLICATION 1126

JANUARY 1981

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Washington, D.C. 20436

U.S. INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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In the Matter of
CERTAIN AIRTIGHT CAST-IRON STOVES

Investigation No. 337-TA-69

COMMISSION ACTION AND ORDER

Introduction

The above-captioned investigation was instituted on the basis of a complaint filed with the Commission on May 23, 1979, on behalf of Aksjeselskapet Jotul, a Norwegian company, and Kristia Associates, a corporation of the State of Maine, alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The Commission issued a notice of investigation, which was published in the Federal Register on July 12, 1979 (44 F.R. 40732). In that notice, the Commission ordered that an investigation be instituted under section 337 to determine whether unfair methods of competition and unfair acts exist in the importation or sale in the United States of certain airtight cast-iron wood and coal burning stoves. The notice stated that the investigation was being undertaken to determine whether respondents' stoves were infringing Jotul's common law trademarks, being passed off as Jotul's products, infringing Jotul's registered U.S. trademarks, or being deceptively advertised and marketed. The complaint alleged that the effect of these acts is to injure an industry, Kristia Associates (now Jotul U.S.A. Inc.) and the Jotul stove dealers, efficiently and economically operated in the United States, or to restrain trade and commerce in the United States.

Fourteen foreign and eleven domestic respondents were named in the original notice of investigation. On October 5, 1979, twenty-six additional respondents were added. On October 16, 1979, one additional foreign respondent was added.

During the course of the investigation, four respondents were terminated upon proof that they had ceased all involvement in the stove business. Twenty-five other respondents have executed consent order agreements or settlement agreements. The other respondents failed to appear and were found by the administrative law judge (ALJ) to be in default.

In her recommended determination, filed on July 7, 1980, the ALJ found that the Commission has subject matter jurisdiction in this investigation and that Kristia and the Jotul stove dealers were a "domestic industry" within the meaning of section 337. The ALJ also determined that the defaulting respondents had committed unfair acts by infringing Jotul's common law and registered trademarks, passing off and false advertising, and that their unfair acts had injured an industry, Kristia Associates and the Jotul distribution network, efficiently and economically operated in the United States. Finally, the ALJ found that the respondents' practices did not constitute restraints of trade and commerce in the United States.

On November 3, 1980, the Commission held a hearing on the ALJ's recommended determination and on relief, bonding, and the public interest. None of the respondents found to be in default by the ALJ appeared at the hearing. At the hearing, the Commission was informed for the first time that

Kristia Associates, which had previously been a wholly-owned American company, was to have 100 percent of its stock purchased by Jotul of Norway. A new corporation, Jotul, USA, Inc., incorporated in Delaware, and a subsidiary of Jotul (Norway), would take over all the functions of Kristia. In a submission dated November 25, 1980, counsel for Kristia confirmed that this transfer of stock ownership had taken place. By vote of the Commission on December 5, 1980, Jotul U.S.A. Inc. was substituted for Kristia Associates as a party complainant.

On December 5, 1980, the Commission determined that there are violations of section 337 by reason of common law trademark infringement, registered U.S. trademark infringement, false and deceptive advertising, and passing off. Therefore, the Commission ordered that an exclusion order issue and that cease and desist orders be imposed against Wood Heat, Heritage Stove Co., Hutch Manufacturing Co., Fireplace Distributors, Meteor Design International, and Great Eastern Trading Co.

Action

Having reviewed the record compiled in this investigation, including (1) the submissions filed by the parties, (2) the transcript of the evidentiary hearing before the ALJ and the exhibits which were accepted into evidence in the course of that hearing, (3) the recommended determination of the ALJ, and (4) the arguments made by the parties at the public hearing before the Commission on November 3, 1980, the Commission on December 5, 1980, determined--

1. That with respect to Hutch Mfg. Co., Fireplace Distributors, Great Eastern Trading Co., Inc., Heritage Stove Co., Meteor Design International Ltd., Genial Jade Industrial Co., Pyramid

International Co., Ltd., Justin Taiwan Industrial Co., Ltd., Cathay Overseas Trading Co., Taiwan Active Enterprises Co., Ltd., Tinpin Trading Co., Nan Shang Enterprises Co., Ltd., Linmore Enterprise Co., Ltd., Formosa May, Inc., Hermix Industries Corp., Firebird Hardware, Inc., Lee-Lin Enterprise Co., Ltd., Yulson Industries Co., Ltd.; KFK Industrial Co., Ltd.; Stratford Mfg. Co., Ltd.; You Well Co., Ltd.; Collins Co., Ltd.; and Wood Heat there is a violation of section 337 of the Tariff Act of 1930, in the unauthorized importation into the United States of certain airtight cast-iron stoves or in their sale 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. The appropriate remedy for such violation is to direct that such airtight cast-iron wood burning stoves which are visually similar to Jotul stoves be excluded from entry into the United States and that respondents Wood Heat, Heritage Stove Co., Hutch Manufacturing Co., Fireplace Distributors, Meteor Design International, and Great Eastern Trading Co. be ordered to cease and desist violating section 337;

3. That after considering the effect of such exclusion and cease and desist orders 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 articles should be excluded from entry and certain respondents ordered to cease and desist; 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 200 percent ad valorem of the imported articles (ad valorem to be determined in accordance with section 402 of the Tariff Act of 1930 (19 U.S.C. 1401(a))).

Order

Accordingly, it is hereby ordered--

1. That any airtight cast iron stoves which are visually similar to Jotul stoves, not otherwise authorized for importation, be excluded from entry into the United States, as provided in the exclusion order attached hereto.

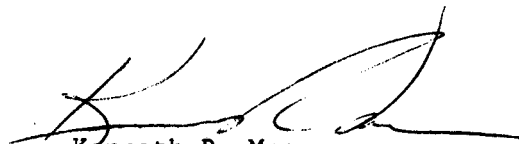
2. That Wood Heat, Heritage Stove Co., Hutch Manufacturing Co., Fireplace Distributors, Meteor Design International, and Great Eastern Trading Co. cease and desist from engaging in common law trademark infringement, registered U.S. trademark infringement, passing off, or false and deceptive advertising with regard to Jotul stoves, as provided in the cease and desist orders attached hereto.

3. That the articles ordered to be excluded from entry are entitled to entry into the United States under bond in the amount of 200 percent ad valorem, as provided by section 337(g)(3)(ad valorem to be determined in accordance with section 402 of the Tariff Act of 1930 (19 U.S.C. 1401(a));

4. That notice of this Action and Order be published in the Federal Register and that this Action and Order and the opinion in support thereof be served upon each party of record to 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

5. That the Commission may amend this order at any time.

By order of the Commission.



Kenneth R. Mason
Secretary

Issued: December 31, 1980

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of
CERTAIN AIRTIGHT, CAST-IRON STOVES

Investigation No. 337-TA-69

EXCLUSION ORDER

The United States International Trade Commission, following an investigation pursuant to 19 U.S.C. section 1337(b)(1), has determined that certain cast-iron airtight woodburning stoves manufactured in Taiwan and Korea are so similar in external appearance to stoves manufactured by Jotul, Inc. of Oslo, Norway so as to cause the possibility of consumer confusion, as well as facilitate conscious deception of consumers, regarding the source and origin of such stoves. Because of the large number of foreign manufacturers, export companies, and domestic importers who have been involved in the importation of such products into the United States, the Commission has determined that exclusion from entry pursuant to section 1337(d) is required to protect American consumers from deceptive practices and to protect Complainants Jotul, U.S.A., Inc. and Jotul (Norway), Inc. from unfair trade practices. Therefore, the Commission orders that such cast-iron airtight woodburning stoves which are visually similar to Jotul stoves be excluded from entry into the United States. Such exclusion shall apply in the following manner:

A. This exclusion order applies to all "stoves," which shall mean, for the purposes of this order, any device or apparatus for combustion of fuel which is used for heating or cooking purposes and shall include, (1) a finished stove, which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a stove, and (2) a stove, which at the time of importation, is not fully assembled, and (3) a kit, which at the time of importation contains all of the components necessary to make it a stove, and (4) parts of a stove which comprise the major components thereof or design features which are readily identifiable and comprise the external features of the stove.


B. Any stove whose visual exterior appearance is similar to the stoves of Jotul, Inc. of Oslo, Norway, photographs of which are attached hereto as Exhibit A are excluded from entry. In order to determine similarity to the Jotul models each photograph is accompanied by a set of criteria which shall be used to determine whether the stove is to be excluded or allowed to enter. If the article possesses the same basic shape as the corresponding Jotul stove, it must be found to meet certain standards in order to enter. If a stove has a rectangular box with a smaller box on top as its basic shape, and such boxes are in a proportion to one another similar to those of the boxes

comprising the Jotul Model No. 118, then in order to be allowed entry, such stoves must:

- (1) have no bas relief in any way similar to the Jotul Model No. 118 (this relief must in any case not be used on any stove of any shape),
- (2) have no star in the vent center,
- (3) have no vertical fluting,
- (4) have no Norwegian motto,
- (5) have a name conspicuously cast on the front face of the stove,
- (6) have, if the name is suggestive of Norway or Scandinavia, then in a type size no less than one-half as great as the type size of the name, on the same side of the stove as the name appears, a statement regarding the actual country of manufacture cast in the stove,
- (7) Have in any case a clearly visible notice of manufacturing locale cast in the exterior of the stove,

Any goods which do not meet the criteria established for each Jotul model will be refused entry.

By order of the Commission:



Kenneth R. Mason
Secretary

Issued: December 31, 1980

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of
CERTAIN AIRTIGHT, CAST-IRON STOVES

Investigation No. 337-TA-69

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Heritage Stove Co. cease and desist from engaging in common law trademark infringement, registered U.S. trademark infringement, passing off, or false and deceptive advertising with regard to Jotul stoves.

I

(Definitions)

As used in this Order:

(A) "Complainants" shall mean Aksjeselskapet Jotul (Jotul, Inc.), P.O. Box 6206-ET, Oslo 6, Norway, and Jotul, U.S.A., Inc., 343 Forest Avenue, P.O. Box 1118, Portland, Maine 04104, and each of them.

(B) "Respondent" shall mean Heritage Stove Co.

(C) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation or other legal or business entity other than the above respondent or its majority owned and/or controlled subsidiaries, their successors or assigns.

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

(E) "Stove" shall mean any device or apparatus for combustion of fuel used for heating or cooking purposes manufactured in any country other than the United States for shipment or export to the United States for resale in the United States. "Stove" shall include any of the following:

(1) A finished stove which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a stove; and

(2) A stove which at the time of importation is not fully assembled; and

(3) A kit which at the time of importation contains all of the components necessary to make it a stove; and

(4) Parts of a stove which comprise the major components thereof or design features which are readily identifiable and comprise the external features of the stove.

(F) "Copy" shall mean each and every stove heretofore or hereafter manufactured, whose exterior shape, and/or artistic design, and/or style, and/or decorative detail and features, and/or trade dress, and/or general appearance mimics, imitates, reproduces, utilizes, or borrows the shape, and/or artistic design, and/or style, and/or decorative detail and features, and/or trade dress and/or appearance of any stove originally designed by or for and manufactured by or for Jotul, Inc. A photograph of each Jotul model to which this order applies is hereby attached as Attachment A. Said features will not include any functional aspect of the stove essential to its operation as a heating device. Said features will be limited to those which are basically arbitrary and which do not serve any particular essential function

with regard to heating or operation of the stove, but only serve to distinguish the product from others.

(G) Notwithstanding anything to the contrary contained in this order, no stove shall be deemed a copy even though consisting of the box or box shape in proportions similar to Jotul Model 118 provided that it:

- (1) Have no bas relief similar to the Jotul Model 118;
- (2) Have no star in the vent center;
- (3) Have no vertical fluting similar to the Jotul Model 118;
- (4) Have no Norwegian motto;
- (5) Have a name conspicuously cast on the front face of the stove;
- (6) Have, if the name is suggestive of Norway or Scandinavia, in a type size no less than one-half as great as the type size of the name appears, a statement regarding the actual country of manufacture cast in the stove;
- (7) Have a notice of manufacturing locale cast on the front, back, side or top of the stove.

(H) Notwithstanding anything to the contrary contained in this order, no stove shall be deemed a copy even though consisting of the basic cone shape with recessed door opening similar to Jotul Model No. 4 provided that it:

- (1) Have an altered door arrangement by addition of two doors opening to the side, or radically different style of vents and door handle, or significantly different shape of door, or other distinguishing

changes any of which have been approved by complainants in writing;

- (2) Have a star in the vent center;
- (3) Have a name conspicuously cast on the front face of the stove;
- (4) Have, if the name is suggestive of Norway or Scandinavia, in a type size no less than one-half as great as the type size of the name, on the same side of the stove as the name appears, a statement regarding the actual country of manufacture cast in the stove;
- (5) Have a notice of manufacturing locale on the front, back, side or top of the stove.

II

(Applicability)

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

III

(Individual Conduct Prohibited)

The following conduct of respondent is required or prohibited by this order:

1. Neither Respondent nor any officers, employees, agents, independent contractors, licensees, distributors, dealers, attorneys or any others over whom respondent exercises control or who act in concert with Respondent will import, distribute, sell, or deal in any stoves of any material, form, or description which are "Copies."

2. Respondent will not represent orally, or in its sales literature or advertising of Respondent's stoves, which are set forth in Attachment A, that such stoves are manufactured in Norway or Scandinavia, unless in fact they are so manufactured. Respondent will not describe any stoves described in the preceding sentence in its sales literature or advertising as being of Norwegian or Scandinavian type or style, unless their actual country of origin is clearly and conspicuously indicated in the sales literature or advertising on one side of the stove within two inches of the front in letters a minimum of three-fourths inch in height.

3. No model numbers which are the same as or similar to those of Jotul's model numbers set forth in Attachment A will be used to designate Respondent's stoves.

4. Respondent shall not in the sale of its stoves suggest or imply that there is any connection between respondent's stoves and Jotul's stoves or that respondent's stoves are or may be in any way a "Jotul" stove or approved by or connected to Jotul.

5. Respondent will not use photographs or likenesses of Jotul stoves in any manner to market its stoves.

6. The name Jotul or ~~Jotul~~ or any colorable imitation thereof will not be utilized by Respondent in any form or manner that might be reasonably interpreted as referring to stoves which are not in fact Jotuls.

7. Nothing in this section shall prohibit the use of the name "Fjord" by Respondent on any of its stoves or in connection with the sale of its stoves as long as the provisions of this section are followed.

IV

(Compliance and Inspection)

(A) For the purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the importation, sale or distribution of stoves made and received in the usual and ordinary course of its business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain, and summary form for a period of seven (7) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order, and for no other purpose, and subject to any privilege recognized by federal courts of the United States, duly authorized representatives of the Commission shall, upon reasonable written notice by the Commission or its staff, be permitted access and the right to inspect and copy in Respondent's principal office during the office hours of Respondent, and in the presence of counsel or other representative if Respondent chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required by Paragraph IV(A) hereof to be retained.

V

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the effective date of this Order, a conformed copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution or sale of such respondent's stove copies in the United States or for shipment or export to the United States for resale in the United States;

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in Section VI (A) above, a conformed copy of this Order upon each successor;

(C) Maintain such records as will show the name, title and address of each such officer, director, managing agent, agent and employee upon whom the Order has been served, as described in Section VI (A) and (B) above, together with the date on which service was made; and

(D) The obligations set forth in Section VI (B) and (C) above shall remain in effect until December 31, 1985.

VI

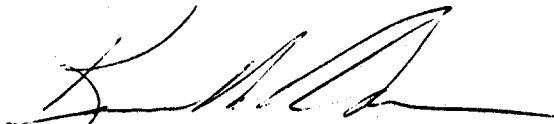
(Enforcement)

Violation of this Order may result in:

1. The revocation of this Order and the permanent exclusion of the articles concerned pursuant to Section 337(d);
2. Temporary exclusion of impending importations of the articles concerned pursuant to Section 337(e); or
3. An action for civil penalties in accordance with the provisions of Section 337(f) and such other action as the Commission may deem appropriate.

In determining whether Respondent is in violation of this Order the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

By order of the Commission:



Kenneth R. Mason
Secretary

Issued: December 31, 1980

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of)
)
CERTAIN AIRTIGHT, CAST-IRON STOVES)
_____)

Investigation No. 337-TA-69

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Fireplace Distributors cease and desist from engaging in common law trademark infringement, registered U.S. trademark infringement, passing off, or false and deceptive advertising with regard to Jotul stoves.

I

(Definitions)

As used in this Order:

(A) "Complainants" shall mean Aksjeselskapet Jotul (Jotul, Inc.), P.O. Box 6206-ET, Oslo 6, Norway, and Jotul, U.S.A., Inc., 343 Forest Avenue, P.O. Box 1118, Portland, Maine 04104, and each of them.

(B) "Respondent" shall mean Fireplace Distributors.

(C) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation or other legal or business entity other than the above respondent or its majority owned and/or controlled subsidiaries, their successors or assigns.

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

(E) "Stove" shall mean any device or apparatus for combustion of fuel used for heating or cooking purposes manufactured in any country other than the United States for shipment or export to the United States for resale in the United States. "Stove" shall include any of the following:

(1) A finished stove which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a stove; and

(2) A stove which at the time of importation is not fully assembled; and

(3) A kit which at the time of importation contains all of the components necessary to make it a stove; and

(4) Parts of a stove which comprise the major components thereof or design features which are readily identifiable and comprise the external features of the stove.

(F) "Copy" shall mean each and every stove heretofore or hereafter manufactured, whose exterior shape, and/or artistic design, and/or style, and/or decorative detail and features, and/or trade dress, and/or general appearance mimics, imitates, reproduces, utilizes, or borrows the shape, and/or artistic design, and/or style, and/or decorative detail and features, and/or trade dress and/or appearance of any stove originally designed by or for and manufactured by or for Jotul, Inc. A photograph of each Jotul model to which this order applies is hereby attached as Attachment A. Said features will not include any functional aspect of the stove essential to its operation as a heating device. Said features will be limited to those which are basically arbitrary and which do not serve any particular essential function

with regard to heating or operation of the stove, but only serve to distinguish the product from others.

(G) Notwithstanding anything to the contrary contained in this order, no stove shall be deemed a copy even though consisting of the box or box shape in proportions similar to Jotul Model 118 provided that it:

- (1) Have no bas relief similar to the Jotul Model 118;
- (2) Have no star in the vent center;
- (3) Have no vertical fluting similar to the Jotul Model 118;
- (4) Have no Norwegian motto;
- (5) Have a name conspicuously cast on the front face of the stove;
- (6) Have, if the name is suggestive of Norway or Scandinavia, in a type size no less than one-half as great as the type size of the name appears, a statement regarding the actual country of manufacture cast in the stove;
- (7) Have a notice of manufacturing locale cast on the front, back, side or top of the stove.

(H) Notwithstanding anything to the contrary contained in this order, no stove shall be deemed a copy even though consisting of the basic cone shape with recessed door opening similar to Jotul Model No. 4 provided that it:

- (1) Have an altered door arrangement by addition of two doors opening to the side, or radically different style of vents and door handle, or significantly different shape of door, or other distinguishing

changes any of which have been approved by complainants in writing;

- (2) Have a star in the vent center;
- (3) Have a name conspicuously cast on the front face of the stove;
- (4) Have, if the name is suggestive of Norway or Scandinavia, in a type size no less than one-half as great as the type size of the name, on the same side of the stove as the name appears, a statement regarding the actual country of manufacture cast in the stove;
- (5) Have a notice of manufacturing locale on the front, back, side or top of the stove.

II

(Applicability)

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

III

(Individual Conduct Prohibited)

The following conduct of respondent is required or prohibited by this order:

1. Neither Respondent nor any officers, employees, agents, independent contractors, licensees, distributors, dealers, attorneys or any others over whom respondent exercises control or who act in concert with Respondent will import, distribute, sell, or deal in any stoves of any material, form, or description which are "Copies."

2. Respondent will not represent orally, or in its sales literature or advertising of Respondent's stoves, which are set forth in Attachment A, that such stoves are manufactured in Norway or Scandinavia, unless in fact they are so manufactured. Respondent will not describe any stoves described in the preceding sentence in its sales literature or advertising as being of Norwegian or Scandinavian type or style, unless their actual country of origin is clearly and conspicuously indicated in the sales literature or advertising on one side of the stove within two inches of the front in letters a minimum of three-fourths inch in height.

3. No model numbers which are the same as or similar to those of Jotul's model numbers set forth in Attachment A will be used to designate Respondent's stoves.

4. Respondent shall not in the sale of its stoves suggest or imply that there is any connection between respondent's stoves and Jotul's stoves or that respondent's stoves are or may be in any way a "Jotul" stove or approved by or connected to Jotul.

5. Respondent will not use photographs or likenesses of Jotul stoves in any manner to market its stoves.

6. The name Jotul or ~~Jotul~~ or any colorable imitation thereof will not be utilized by Respondent in any form or manner that might be reasonably interpreted as referring to stoves which are not in fact Jotuls.

7. Nothing in this section shall prohibit the use of the name "Fjord" by Respondent on any of its stoves or in connection with the sale of its stoves as long as the provisions of this section are followed.

IV

(Compliance and Inspection)

(A) For the purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the importation, sale or distribution of stoves made and received in the usual and ordinary course of its business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain, and summary form for a period of seven (7) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order, and for no other purpose, and subject to any privilege recognized by federal courts of the United States, duly authorized representatives of the Commission shall, upon reasonable written notice by the Commission or its staff, be permitted access and the right to inspect and copy in Respondent's principal office during the office hours of Respondent, and in the presence of counsel or other representative if Respondent chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required by Paragraph IV(A) hereof to be retained.

correspondence, memoranda, financial reports, and other records or documents in its possession or control for the purposes of verifying any matter contained in the reports required under paragraph IV of this Order.

VI

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution or sale of such respondent's stove copies in the United States or for shipment or export to the United States for resale in the United States;

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in Section VI (A) above, a conformed copy of this Order upon each successor;

(C) Maintain such records as will show the name, title and address of each such officer, director, managing agent, agent and employee upon whom the Order has been served, as described in Section VI (A) and (B) above, together with the date on which service was made; and

(D) The obligations set forth in Section VI (B) and (C) above shall remain in effect until December 31, 1985.

VII

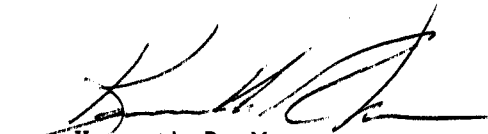
(Enforcement)

Violation of this Order may result in:

1. The revocation of this Order and the permanent exclusion of the articles concerned pursuant to Section 337(d);
2. Temporary exclusion of impending importations of the articles concerned pursuant to Section 337(e); or
3. An action for civil penalties in accordance with the provisions of Section 337(f) and such other action as the Commission may deem appropriate.

In determining whether Respondent is in violation of this Order the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

By order of the Commission:



Kenneth R. Mason
Secretary

Issued: December 31, 1980

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of _____
CERTAIN AIRTIGHT, CAST-IRON STOVES _____

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Investigation No. 337-TA-69

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Wood Heat, Rt. 212, Pleasant Valley, Quakertown, Pennsylvania 18951, cease and desist from engaging in common law trademark infringement, registered U.S. trademark infringement, passing off, or false and deceptive advertising with regard to Jotul stoves.

I

(Definitions)

As used in this Order:

(A) "Complainants" shall mean Aksjeselskapet Jotul (Jotul, Inc.), P.O. Box 6206-ET, Oslo 6, Norway, and Jotul, U.S.A., Inc., 343 Forest Avenue, P.O. Box 1118, Portland, Maine 04104, and each of them.

(B) "Respondent" shall mean Wood Heat, Rt. 212, Pleasant Valley, Quakertown, Pennsylvania 18951.

(C) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation or other legal or business entity other than the above respondent or its majority owned and/or controlled subsidiaries, their successors or assigns.

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

(E) "Stove" shall mean any device or apparatus for combustion of fuel used for heating or cooking purposes manufactured in any country other than the United States for shipment or export to the United States for resale in the United States. "Stove" shall include any of the following:

(1) A finished stove which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a stove; and

(2) A stove which at the time of importation is not fully assembled; and

(3) A kit which at the time of importation contains all of the components necessary to make it a stove; and

(4) Parts of a stove which comprise the major components thereof or design features which are readily identifiable and comprise the external features of the stove.

(F) "Copy" shall mean each and every stove heretofore or hereafter manufactured, whose exterior shape, and/or artistic design, and/or style, and/or decorative detail and features, and/or trade dress, and/or general appearance mimics, imitates, reproduces, utilizes, or borrows the shape, and/or artistic design, and/or style, and/or decorative detail and features, and/or trade dress and/or appearance of any stove originally designed by or for and manufactured by or for Jotul, Inc. A photograph of each Jotul model to which this order applies is hereby attached as Attachment A. Said features will not include any functional aspect of the stove essential to its operation as a heating device. Said features will be limited to those which are basically arbitrary and which do not serve any particular essential function

with regard to heating or operation of the stove, but only serve to distinguish the product from others.

(G) Notwithstanding anything to the contrary contained in this order, no stove shall be deemed a copy even though consisting of the box or box shape in proportions similar to Jotul Model 118 provided that it:

- (1) Have no bas relief similar to the Jotul Model 118;
- (2) Have no star in the vent center;
- (3) Have no vertical fluting similar to the Jotul Model 118;
- (4) Have no Norwegian motto;
- (5) Have a name conspicuously cast on the front face of the stove;
- (6) Have, if the name is suggestive of Norway or Scandinavia, in a type size no less than one-half as great as the type size of the name appears, a statement regarding the actual country of manufacture cast in the stove;
- (7) Have a notice of manufacturing locale cast on the front, back, side or top of the stove.

(H) Notwithstanding anything to the contrary contained in this order, no stove shall be deemed a copy even though consisting of the basic cone shape with recessed door opening similar to Jotul Model No. 4 provided that it:

- (1) Have an altered door arrangement by addition of two doors opening to the side, or radically different style of vents and door handle, or significantly different shape of door, or other distinguishing

changes any of which have been approved by complainants in writing;

- (2) Have a star in the vent center;
- (3) Have a name conspicuously cast on the front face of the stove;
- (4) Have, if the name is suggestive of Norway or Scandinavia, in a type size no less than one-half as great as the type size of the name, on the same side of the stove as the name appears, a statement regarding the actual country of manufacture cast in the stove;
- (5) Have a notice of manufacturing locale on the front, back, side or top of the stove.

II

(Applicability)

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

III

(Individual Conduct Prohibited)

The following conduct of respondent is required or prohibited by this order:

1. Neither Respondent nor any officers, employees, agents, independent contractors, licensees, distributors, dealers, attorneys or any others over whom respondent exercises control or who act in concert with Respondent will import, distribute, sell, or deal in any stoves of any material, form, or description which are "Copies."

2. Respondent will not represent orally, or in its sales literature or advertising of Respondent's stoves, which are set forth in Attachment A, that such stoves are manufactured in Norway or Scandinavia, unless in fact they are so manufactured. Respondent will not describe any stoves described in the preceding sentence in its sales literature or advertising as being of Norwegian or Scandinavian type or style, unless their actual country of origin is clearly and conspicuously indicated in the sales literature or advertising on the same side of the stove where such reference to Norwegian or Scandinavian type or style appears.

3. No model numbers which are the same as or similar to those of Jotul's model numbers set forth in Attachment A will be used to designate Respondent's stoves.

4. Respondent shall not in the sale of its stoves suggest or imply that there is any connection between respondent's stoves and Jotul's stoves or that respondent's stoves are or may be in any way a "Jotul" stove or approved by or connected to Jotul.

5. Respondent will not use photographs or likenesses of Jotul stoves in any manner to market its stoves.

6. The name Jotul or Jotul or any colorable imitation thereof will not be utilized by Respondent in any form or manner that might be reasonably interpreted as referring to stoves which are not in fact Jotuls.

IV

(Reporting)

Respondent shall report to the Commission:

1. All imports and sales of imports of airtight wood or coal burning stoves;
2. All invoices, delivery orders, bills of lading and all other documents concerning each and every import and sale of such stoves;
3. All brochures, advertisements, catalogues, books, or sales material of whatever type concerning such stoves; and
4. A photograph or other pictorial representation of each and every type of such stoves. The first such report under this paragraph shall be due 180 days after the publication of this Order in the Federal Register. Subsequent reports shall be due 60 days after the close of Respondent's fiscal year. These subsequent reports shall be filed for each fiscal year up to and including fiscal year 1983. Failure to report shall constitute a violation of this Order.

V

(Compliance and Inspection)

Respondent shall furnish or otherwise make available to the Commission or its authorized representatives, upon written request by the Commission mailed to its principal office in the United States, all books, ledgers, accounts,

V

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the effective date of this Order, a conformed copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution or sale of such respondent's stove copies in the United States or for shipment or export to the United States for resale in the United States;

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in Section VI (A) above, a conformed copy of this Order upon each successor;

(C) Maintain such records as will show the name, title and address of each such officer, director, managing agent, agent and employee upon whom the Order has been served, as described in Section VI (A) and (B) above, together with the date on which service was made; and

(D) The obligations set forth in Section VI (B) and (C) above shall remain in effect until December 31, 1985.

VI

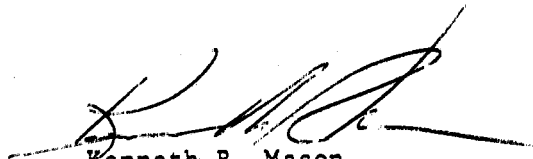
(Enforcement)

Violation of this Order may result in:

1. The revocation of this Order and the permanent exclusion of the articles concerned pursuant to Section 337(d);
2. Temporary exclusion of impending importations of the articles concerned pursuant to Section 337(e); or
3. An action for civil penalties in accordance with the provisions of Section 337(f) and such other action as the Commission may deem appropriate.

In determining whether Respondent is in violation of this Order the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

By order of the Commission:



Kenneth R. Mason
Secretary

Issued: December 31, 1980

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of)
)
CERTAIN AIRTIGHT, CAST-IRON STOVES)
_____)

Investigation No. 337-TA-69

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Hutch Manufacturing Co., 200 Commerce Ave., P.O. Box 350, Loudon, Tennessee 37774, cease and desist from engaging in common law trademark infringement, registered U.S. trademark infringement, passing off, or false and deceptive advertising with regard to Jotul stoves.

I

(Definitions)

As used in this Order:

(A) "Complainants" shall mean Aksjeselskapet Jotul (Jotul, Inc.), P.O. Box 6206-ET, Oslo 6, Norway, and Jotul, U.S.A., Inc., 343 Forest Avenue, P.O. Box 1118, Portland, Maine 04104, and each of them.

(B) "Respondent" shall mean Hutch Manufacturing Co., 200 Commerce Ave., P.O. Box 350, Loudon, Tennessee 37774.

(C) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation or other legal or business entity other than the above respondent or its majority owned and/or controlled subsidiaries, their successors or assigns.

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

(E) "Stove" shall mean any device or apparatus for combustion of fuel used for heating or cooking purposes manufactured in any country other than the United States for shipment or export to the United States for resale in the United States. "Stove" shall include any of the following:

(1) A finished stove which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a stove; and

(2) A stove which at the time of importation is not fully assembled; and

(3) A kit which at the time of importation contains all of the components necessary to make it a stove; and

(4) Parts of a stove which comprise the major components thereof or design features which are readily identifiable and comprise the external features of the stove.

(F) "Copy" shall mean each and every stove heretofore or hereafter manufactured, whose exterior shape, and/or artistic design, and/or style, and/or decorative detail and features, and/or trade dress, and/or general appearance mimics, imitates, reproduces, utilizes, or borrows the shape, and/or artistic design, and/or style, and/or decorative detail and features, and/or trade dress and/or appearance of any stove originally designed by or for and manufactured by or for Jotul, Inc. A photograph of each Jotul model to which this order applies is hereby attached as Attachment A. Said features will not include any functional aspect of the stove essential to its operation as a heating device. Said features will be limited to those which are basically arbitrary and which do not serve any particular essential function

with regard to heating or operation of the stove, but only serve to distinguish the product from others.

(G) Notwithstanding anything to the contrary contained in this order, no stove shall be deemed a copy even though consisting of the box or box shape in proportions similar to Jotul Model 118 provided that it:

- (1) Have no bas relief similar to the Jotul Model 118;
- (2) Have no star in the vent center;
- (3) Have no vertical fluting similar to the Jotul Model 118;
- (4) Have no Norwegian motto;
- (5) Have a name conspicuously cast on the front face of the stove;
- (6) Have, if the name is suggestive of Norway or Scandinavia, in a type size no less than one-half as great as the type size of the name appears, a statement regarding the actual country of manufacture cast in the stove;
- (7) Have a notice of manufacturing locale cast on the front, back, side or top of the stove.

(H) Notwithstanding anything to the contrary contained in this order, no stove shall be deemed a copy even though consisting of the basic cone shape with recessed door opening similar to Jotul Model No. 4 provided that it:

- (1) Have an altered door arrangement by addition of two doors opening to the side, or radically different style of vents and door handle, or significantly different shape of door, or other distinguishing

changes any of which have been approved by complainants in writing;

- (2) Have a star in the vent center;
- (3) Have a name conspicuously cast on the front face of the stove;
- (4) Have, if the name is suggestive of Norway or Scandinavia, in a type size no less than one-half as great as the type size of the name, on the same side of the stove as the name appears, a statement regarding the actual country of manufacture cast in the stove;
- (5) Have a notice of manufacturing locale on the front, back, side or top of the stove.

II

(Applicability)

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

III

(Individual Conduct Prohibited)

The following conduct of respondent is required or prohibited by this order:

1. Neither Respondent nor any officers, employees, agents, independent contractors, licensees, distributors, dealers, attorneys or any others over whom respondent exercises control or who act in concert with Respondent will import, distribute, sell, or deal in any stoves of any material, form, or description which are "Copies."

2. Respondent will not represent orally, or in its sales literature or advertising of Respondent's stoves, which are set forth in Attachment A, that such stoves are manufactured in Norway or Scandinavia, unless in fact they are so manufactured. Respondent will not describe any stoves described in the preceding sentence in its sales literature or advertising as being of Norwegian or Scandinavian type or style, unless their actual country of origin is clearly and conspicuously indicated in the sales literature or advertising on the same side of the stove where such reference to Norwegian or Scandinavian type or style appears.

3. No model numbers which are the same as or similar to those of Jotul's model numbers set forth in Attachment A will be used to designate Respondent's stoves.

4. Respondent shall not in the sale of its stoves suggest or imply that there is any connection between respondent's stoves and Jotul's stoves or that respondent's stoves are or may be in any way a "Jotul" stove or approved by or connected to Jotul.

5. Respondent will not use photographs or likenesses of Jotul stoves in any manner to market its stoves.

6. The name Jotul or Jotul or any colorable imitation thereof will not be utilized by Respondent in any form or manner that might be reasonably interpreted as referring to stoves which are not in fact Jotuls.

IV

(Reporting)

Respondent shall report to the Commission:

1. All imports and sales of imports of airtight wood or coal burning stoves;
2. All invoices, delivery orders, bills of lading and all other documents concerning each and every import and sale of such stoves;
3. All brochures, advertisements, catalogues, books, or sales material of whatever type concerning such stoves; and
4. A photograph or other pictorial representation of each and every type of such stoves. The first such report under this paragraph shall be due 180 days after the publication of this Order in the Federal Register. Subsequent reports shall be due 60 days after the close of Respondent's fiscal year. These subsequent reports shall be filed for each fiscal year up to and including fiscal year 1983. Failure to report shall constitute a violation of this Order.

V

(Compliance and Inspection)

Respondent shall furnish or otherwise make available to the Commission or its authorized representatives, upon written request by the Commission mailed to its principal office in the United States, all books, ledgers, accounts,

correspondence, memoranda, financial reports, and other records or documents in its possession or control for the purposes of verifying any matter contained in the reports required under paragraph IV of this Order.

VI

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution or sale of such respondent's stove copies in the United States or for shipment or export to the United States for resale in the United States;

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in Section VI (A) above, a conformed copy of this Order upon each successor;

(C) Maintain such records as will show the name, title and address of each such officer, director, managing agent, agent and employee upon whom the Order has been served, as described in Section VI (A) and (B) above, together with the date on which service was made; and

(D) The obligations set forth in Section VI (B) and (C) above shall remain in effect until December 31, 1985.

VII

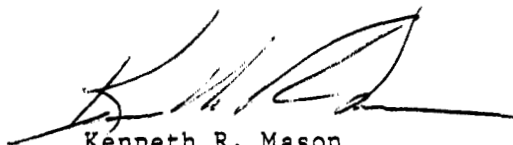
(Enforcement)

Violation of this Order may result in:

1. The revocation of this Order and the permanent exclusion of the articles concerned pursuant to Section 337(d);
2. Temporary exclusion of impending importations of the articles concerned pursuant to Section 337(e); or
3. An action for civil penalties in accordance with the provisions of Section 337(f) and such other action as the Commission may deem appropriate.

In determining whether Respondent is in violation of this Order the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

By order of the Commission:



Kenneth R. Mason
Secretary

Issued: December 31, 1980

(E) "Stove" shall mean any device or apparatus for combustion of fuel used for heating or cooking purposes manufactured in any country other than the United States for shipment or export to the United States for resale in the United States. "Stove" shall include any of the following:

(1) A finished stove which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a stove; and

(2) A stove which at the time of importation is not fully assembled; and

(3) A kit which at the time of importation contains all of the components necessary to make it a stove; and

(4) Parts of a stove which comprise the major components thereof or design features which are readily identifiable and comprise the external features of the stove.

(F) "Copy" shall mean each and every stove heretofore or hereafter manufactured, whose exterior shape, and/or artistic design, and/or style, and/or decorative detail and features, and/or trade dress, and/or general appearance mimics, imitates, reproduces, utilizes, or borrows the shape, and/or artistic design, and/or style, and/or decorative detail and features, and/or trade dress and/or appearance of any stove originally designed by or for and manufactured by or for Jotul, Inc. A photograph of each Jotul model to which this order applies is hereby attached as Attachment A. Said features will not include any functional aspect of the stove essential to its operation as a heating device. Said features will be limited to those which are basically arbitrary and which do not serve any particular essential function

with regard to heating or operation of the stove, but only serve to distinguish the product from others.

(G) Notwithstanding anything to the contrary contained in this order, no stove shall be deemed a copy even though consisting of the box or box shape in proportions similar to Jotul Model 118 provided that it:

- (1) Have no bas relief similar to the Jotul Model 118;
- (2) Have no star in the vent center;
- (3) Have no vertical fluting similar to the Jotul Model 118;
- (4) Have no Norwegian motto;
- (5) Have a name conspicuously cast on the front face of the stove;
- (6) Have, if the name is suggestive of Norway or Scandinavia, in a type size no less than one-half as great as the type size of the name appears, a statement regarding the actual country of manufacture cast in the stove;
- (7) Have a notice of manufacturing locale cast on the front, back, side or top of the stove.

(H) Notwithstanding anything to the contrary contained in this order, no stove shall be deemed a copy even though consisting of the basic cone shape with recessed door opening similar to Jotul Model No. 4 provided that it:

- (1) Have an altered door arrangement by addition of two doors opening to the side, or radically different style of vents and door handle, or significantly different shape of door, or other distinguishing

changes any of which have been approved by complainants in writing;

- (2) Have a star in the vent center;
- (3) Have a name conspicuously cast on the front face of the stove;
- (4) Have, if the name is suggestive of Norway or Scandinavia, in a type size no less than one-half as great as the type size of the name, on the same side of the stove as the name appears, a statement regarding the actual country of manufacture cast in the stove;
- (5) Have a notice of manufacturing locale on the front, back, side or top of the stove.

II

(Applicability)

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

III

(Individual Conduct Prohibited)

The following conduct of respondent is required or prohibited by this order:

1. Neither Respondent nor any officers, employees, agents, independent contractors, licensees, distributors, dealers, attorneys or any others over whom respondent exercises control or who act in concert with Respondent will import, distribute, sell, or deal in any stoves of any material, form, or description which are "Copies."

2. Respondent will not represent orally, or in its sales literature or advertising of Respondent's stoves, which are set forth in Attachment A, that such stoves are manufactured in Norway or Scandinavia, unless in fact they are so manufactured. Respondent will not describe any stoves described in the preceding sentence in its sales literature or advertising as being of Norwegian or Scandinavian type or style, unless their actual country of origin is clearly and conspicuously indicated in the sales literature or advertising on the same side of the stove where such reference to Norwegian or Scandinavian type or style appears.

3. No model numbers which are the same as or similar to those of Jotul's model numbers set forth in Attachment A will be used to designate Respondent's stoves.

4. Respondent shall not in the sale of its stoves suggest or imply that there is any connection between respondent's stoves and Jotul's stoves or that respondent's stoves are or may be in any way a "Jotul" stove or approved by or connected to Jotul.

5. Respondent will not use photographs or likenesses of Jotul stoves in any manner to market its stoves.

6. The name Jotul or Jotul or any colorable imitation thereof will not be utilized by Respondent in any form or manner that might be reasonably interpreted as referring to stoves which are not in fact Jotuls.

IV

(Reporting)

Respondent shall report to the Commission:

1. All imports and sales of imports of airtight wood or coal burning stoves;
2. All invoices, delivery orders, bills of lading and all other documents concerning each and every import and sale of such stoves;
3. All brochures, advertisements, catalogues, books, or sales material of whatever type concerning such stoves; and
4. A photograph or other pictorial representation of each and every type of such stoves. The first such report under this paragraph shall be due 180 days after the publication of this Order in the Federal Register.

Subsequent reports shall be due 60 days after the close of Respondent's fiscal year. These subsequent reports shall be filed for each fiscal year up to and including fiscal year 1983. Failure to report shall constitute a violation of this Order.

V

(Compliance and Inspection)

Respondent shall furnish or otherwise make available to the Commission or its authorized representatives, upon written request by the Commission mailed to its principal office in the United States, all books, ledgers, accounts,

correspondence, memoranda, financial reports, and other records or documents in its possession or control for the purposes of verifying any matter contained in the reports required under paragraph IV of this Order.

VI

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution or sale of such respondent's stove copies in the United States or for shipment or export to the United States for resale in the United States;

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in Section VI (A) above, a conformed copy of this Order upon each successor;

(C) Maintain such records as will show the name, title and address of each such officer, director, managing agent, agent and employee upon whom the Order has been served, as described in Section VI (A) and (B) above, together with the date on which service was made; and

(D) The obligations set forth in Section VI (B) and (C) above shall remain in effect until December 31, 1985.

VII

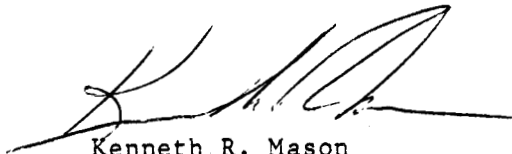
(Enforcement)

Violation of this Order may result in:

1. The revocation of this Order and the permanent exclusion of the articles concerned pursuant to Section 337(d);
2. Temporary exclusion of impending importations of the articles concerned pursuant to Section 337(e); or
3. An action for civil penalties in accordance with the provisions of Section 337(f) and such other action as the Commission may deem appropriate.

In determining whether Respondent is in violation of this Order the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

By order of the Commission:



Kenneth R. Mason
Secretary

Issued: December 31, 1980

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of)
)
CERTAIN AIRTIGHT, CAST-IRON STOVES)
_____)

Investigation No. 337-TA-69

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Great Eastern Trading Co. cease and desist from engaging in common law trademark infringement, registered U.S. trademark infringement, passing off, or false and deceptive advertising with regard to Jotul stoves.

I

(Definitions)

As used in this Order:

(A) "Complainants" shall mean Aksjeselskapet Jotul (Jotul, Inc.), P.O. Box 6206-ET, Oslo 6, Norway, and Jotul, U.S.A., Inc., 343 Forest Avenue, P.O. Box 1118, Portland, Maine 04104, and each of them.

(B) "Respondent" shall mean Great Eastern Trading Co.

(C) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation or other legal or business entity other than the above respondent or its majority owned and/or controlled subsidiaries, their successors or assigns.

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

(E) "Stove" shall mean any device or apparatus for combustion of fuel used for heating or cooking purposes manufactured in any country other than the United States for shipment or export to the United States for resale in the United States. "Stove" shall include any of the following:

(1) A finished stove which at the time of importation is fully assembled, whether or not tested or packaged, for distribution to the purchaser as a stove; and

(2) A stove which at the time of importation is not fully assembled; and

(3) A kit which at the time of importation contains all of the components necessary to make it a stove; and

(4) Parts of a stove which comprise the major components thereof or design features which are readily identifiable and comprise the external features of the stove.

(F) "Copy" shall mean each and every stove heretofore or hereafter manufactured, whose exterior shape, and/or artistic design, and/or style, and/or decorative detail and features, and/or trade dress, and/or general appearance mimics, imitates, reproduces, utilizes, or borrows the shape, and/or artistic design, and/or style, and/or decorative detail and features, and/or trade dress and/or appearance of any stove originally designed by or for and manufactured by or for Jotul, Inc. A photograph of each Jotul model to which this order applies is hereby attached as Attachment A. Said features will not include any functional aspect of the stove essential to its operation as a heating device. Said features will be limited to those which are basically arbitrary and which do not serve any particular essential function

with regard to heating or operation of the stove, but only serve to distinguish the product from others.

(G) Notwithstanding anything to the contrary contained in this order, no stove shall be deemed a copy even though consisting of the box or box shape in proportions similar to Jotul Model 118 provided that it:

- (1) Have no bas relief similar to the Jotul Model 118;
- (2) Have no star in the vent center;
- (3) Have no vertical fluting similar to the Jotul Model 118;
- (4) Have no Norwegian motto;
- (5) Have a name conspicuously cast on the front face of the stove;
- (6) Have, if the name is suggestive of Norway or Scandinavia, in a type size no less than one-half as great as the type size of the name appears, a statement regarding the actual country of manufacture cast in the stove;
- (7) Have a notice of manufacturing locale cast on the front, back, side or top of the stove.

(H) Notwithstanding anything to the contrary contained in this order, no stove shall be deemed a copy even though consisting of the basic cone shape with recessed door opening similar to Jotul Model No. 4 provided that it:

- (1) Have an altered door arrangement by addition of two doors opening to the side, or radically different style of vents and door handle, or significantly different shape of door, or other distinguishing

changes any of which have been approved by complainants in writing;

- (2) Have a star in the vent center;
- (3) Have a name conspicuously cast on the front face of the stove;
- (4) Have, if the name is suggestive of Norway or Scandinavia, in a type size no less than one-half as great as the type size of the name, on the same side of the stove as the name appears, a statement regarding the actual country of manufacture cast in the stove;
- (5) Have a notice of manufacturing locale on the front, back, side or top of the stove.

II

(Applicability)

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

III

(Individual Conduct Prohibited)

The following conduct of respondent is required or prohibited by this order:

1. Neither Respondent nor any officers, employees, agents, independent contractors, licensees, distributors, dealers, attorneys or any others over whom respondent exercises control or who act in concert with Respondent will import, distribute, sell, or deal in any stoves of any material, form, or description which are "Copies."

2. Respondent will not represent orally, or in its sales literature or advertising of Respondent's stoves, which are set forth in Attachment A, that such stoves are manufactured in Norway or Scandinavia, unless in fact they are so manufactured. Respondent will not describe any stoves described in the preceding sentence in its sales literature or advertising as being of Norwegian or Scandinavian type or style, unless their actual country of origin is clearly and conspicuously indicated in the sales literature or advertising on the same side of the stove where such reference to Norwegian or Scandinavian type or style appears.

3. No model numbers which are the same as or similar to those of Jotul's model numbers set forth in Attachment A will be used to designate Respondent's stoves.

4. Respondent shall not in the sale of its stoves suggest or imply that there is any connection between respondent's stoves and Jotul's stoves or that respondent's stoves are or may be in any way a "Jotul" stove or approved by or connected to Jotul.

5. Respondent will not use photographs or likenesses of Jotul stoves in any manner to market its stoves.

6. The name Jotul or Jotul or any colorable imitation thereof will not be utilized by Respondent in any form or manner that might be reasonably interpreted as referring to stoves which are not in fact Jotuls.

IV

(Reporting)

Respondent shall report to the Commission:

1. All imports and sales of imports of airtight wood or coal burning stoves;
2. All invoices, delivery orders, bills of lading and all other documents concerning each and every import and sale of such stoves;
3. All brochures, advertisements, catalogues, books, or sales material of whatever type concerning such stoves; and
4. A photograph or other pictorial representation of each and every type of such stoves. The first such report under this paragraph shall be due 180 days after the publication of this Order in the Federal Register. Subsequent reports shall be due 60 days after the close of Respondent's fiscal year. These subsequent reports shall be filed for each fiscal year up to and including fiscal year 1983. Failure to report shall constitute a violation of this Order.

V

(Compliance and Inspection)

Respondent shall furnish or otherwise make available to the Commission or its authorized representatives, upon written request by the Commission mailed to its principal office in the United States, all books, ledgers, accounts,

correspondence, memoranda, financial reports, and other records or documents in its possession or control for the purposes of verifying any matter contained in the reports required under paragraph IV of this Order.

VI

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the marketing, distribution or sale of such respondent's stove copies in the United States or for shipment or export to the United States for resale in the United States;

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in Section VI (A) above, a conformed copy of this Order upon each successor;

(C) Maintain such records as will show the name, title and address of each such officer, director, managing agent, agent and employee upon whom the Order has been served, as described in Section VI (A) and (B) above, together with the date on which service was made; and

(D) The obligations set forth in Section VI (B) and (C) above shall remain in effect until December 31, 1985.

VII

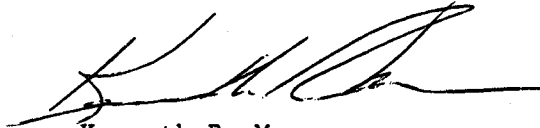
(Enforcement)

Violation of this Order may result in:

1. The revocation of this Order and the permanent exclusion of the articles concerned pursuant to Section 337(d);
2. Temporary exclusion of impending importations of the articles concerned pursuant to Section 337(e); or
3. An action for civil penalties in accordance with the provisions of Section 337(f) and such other action as the Commission may deem appropriate.

In determining whether Respondent is in violation of this Order the Commission may infer facts adverse to Respondent if it fails to provide adequate or timely information.

By order of the Commission:

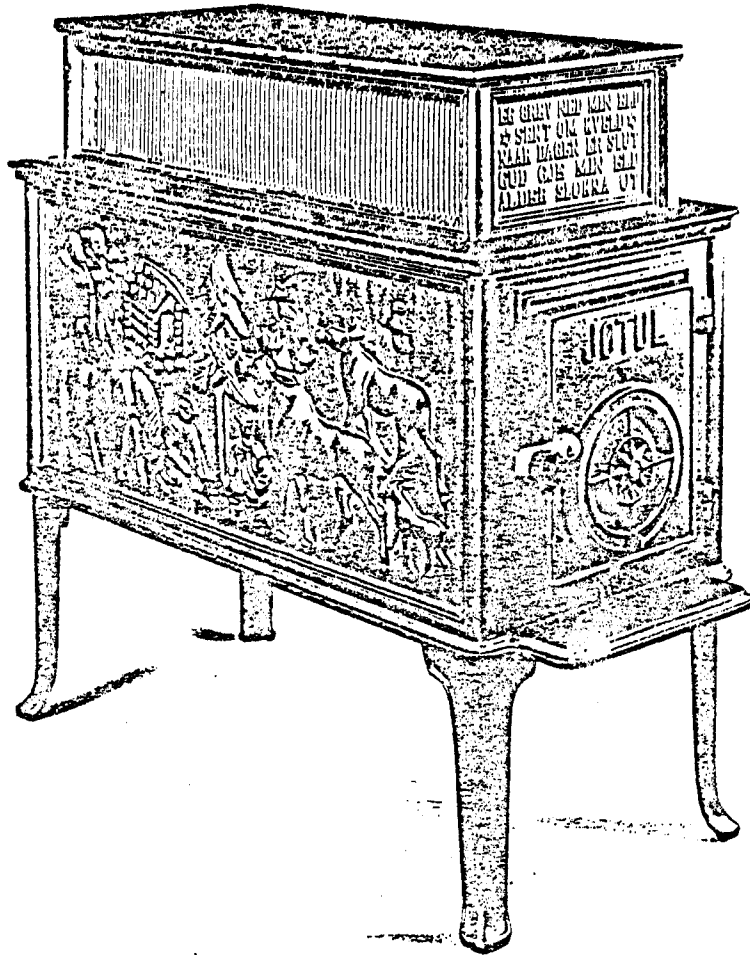


Kenneth R. Mason
Secretary

Issued: December 31, 1980

ATTACHMENT A

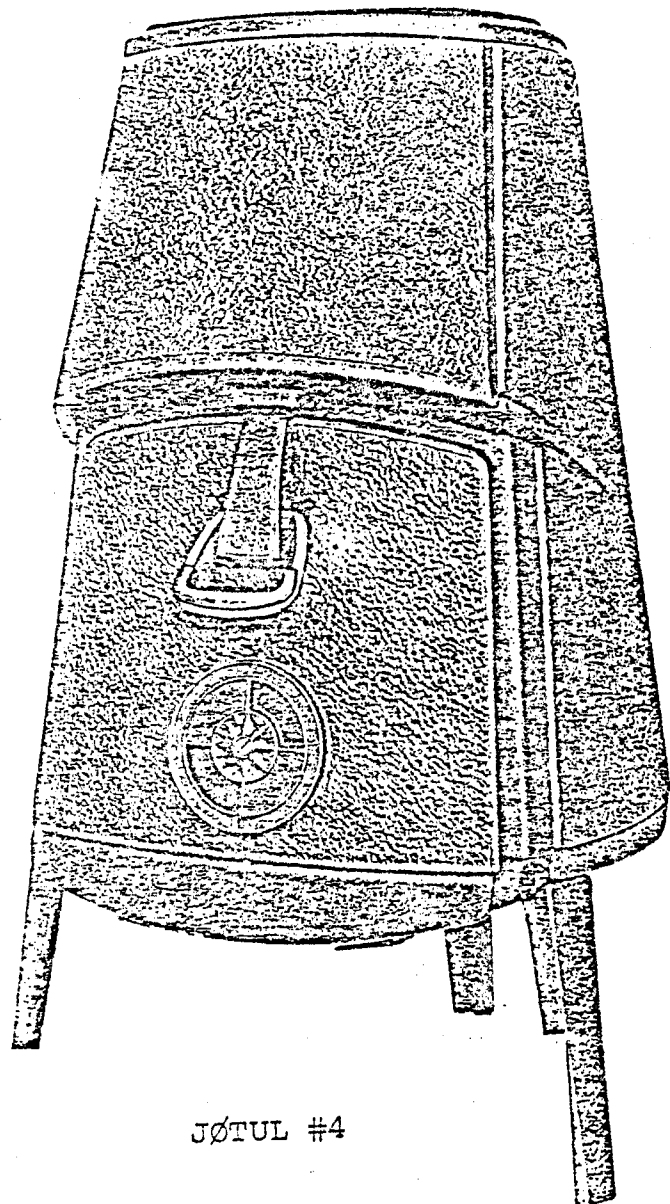
JØTUL #118



JØTUL MODEL NO. 118 STOVE

If basic box on box shape in proportions similar to Jøtul Model No. 118 is present, then to be entered the stove must:

- 1) Have no bas relief in any way similar to the Jøtul Model No. 118 (this relief must in any case not be used on any stove of any shape);
- 2) Have no star in the vent center;
- 3) Have no vertical fluting;
- 4) Have no Norwegian motto;
- 5) Have a name conspicuously cast on the front face of the stove;
- 6) Have, if the name is suggestive of Norway or Scandinavia, then in a type size no less than one-half as great as the type size of the name, on the same side of the stove as the name appears, a statement regarding the actual country of manufacture cast in the stove;
- 7) Have in any case a clearly visible notice of manufacturing locale cast in the exterior of the stove.



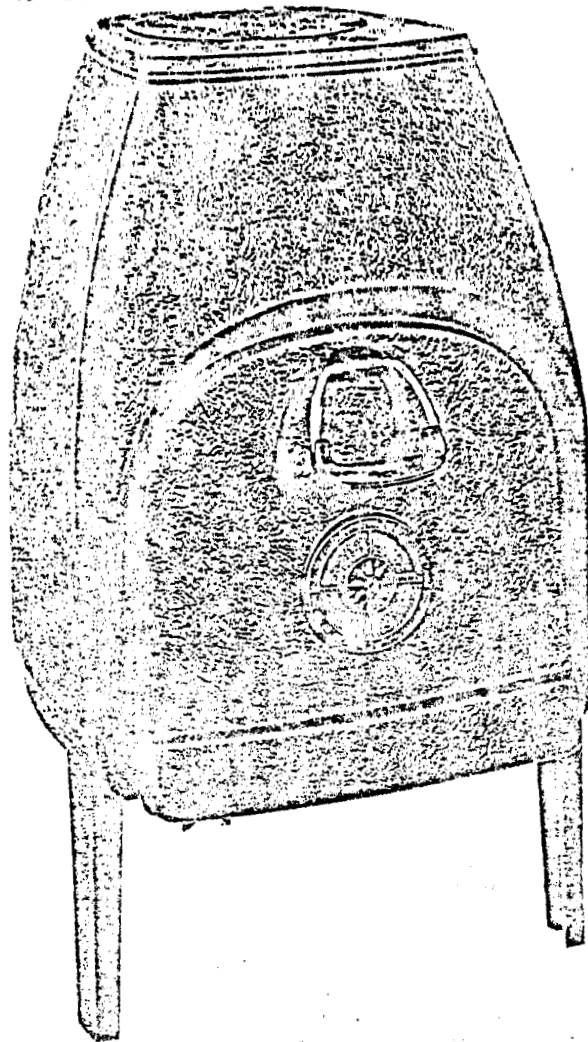
JØTUL #4

JØTUL MODEL NO. 4 STOVE

If the basic cone-shape with recessed door opening similar to the Jøtul Model No. 4 is present, then to be entered the stove must:

- 1) Have an altered door arrangement by addition of two doors opening to the side, or one door opening to the side, or a significantly different shape of door;
- 2) Not have a star in the vent center;
- 3) Have a name conspicuously cast on the front face of the stove;
- 4) Have, if the name is suggestive of Norway or Scandinavia, then in a type size no less than one-half as great as the type size of the name, on the same side of the stove as the name appears, a statement regarding the actual country of manufacture cast in the stove;
- 5) Have in any case a clearly visible notice of manufacturing locale cast in the exterior of the stove.

JØTUL #1

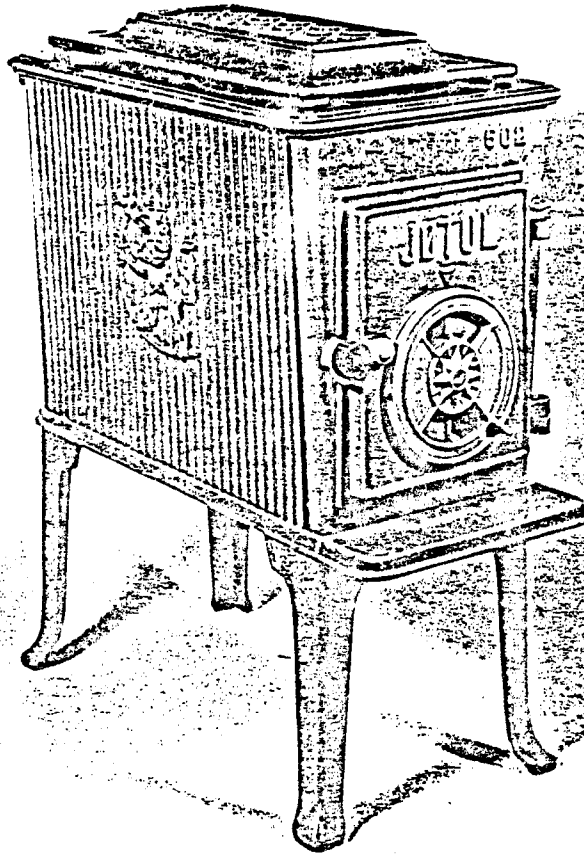


JØTUL MODEL NO. 1 STOVE

If the basic beehive shape of the Jøtul No. 1 is present, then to be entered the stove must:

1. Have an altered door arrangement from that of the Jøtul by addition of two doors opening to the side, or one door opening to the side, or have a significantly different shape of door;
2. Have no star in any vent center;
3. Have a name conspicuously cast on the front face of the stove;
4. Have, if the name is suggestive of Norway or Scandinavia, then in a type size no less than one-half as great as the type size of the name, on the same side of the stove as the name appears, a statement regarding the actual country of manufacture cast in the stove;
5. Have in any case a clearly visible notice of manufacturing locale cast in the exterior of the stove.

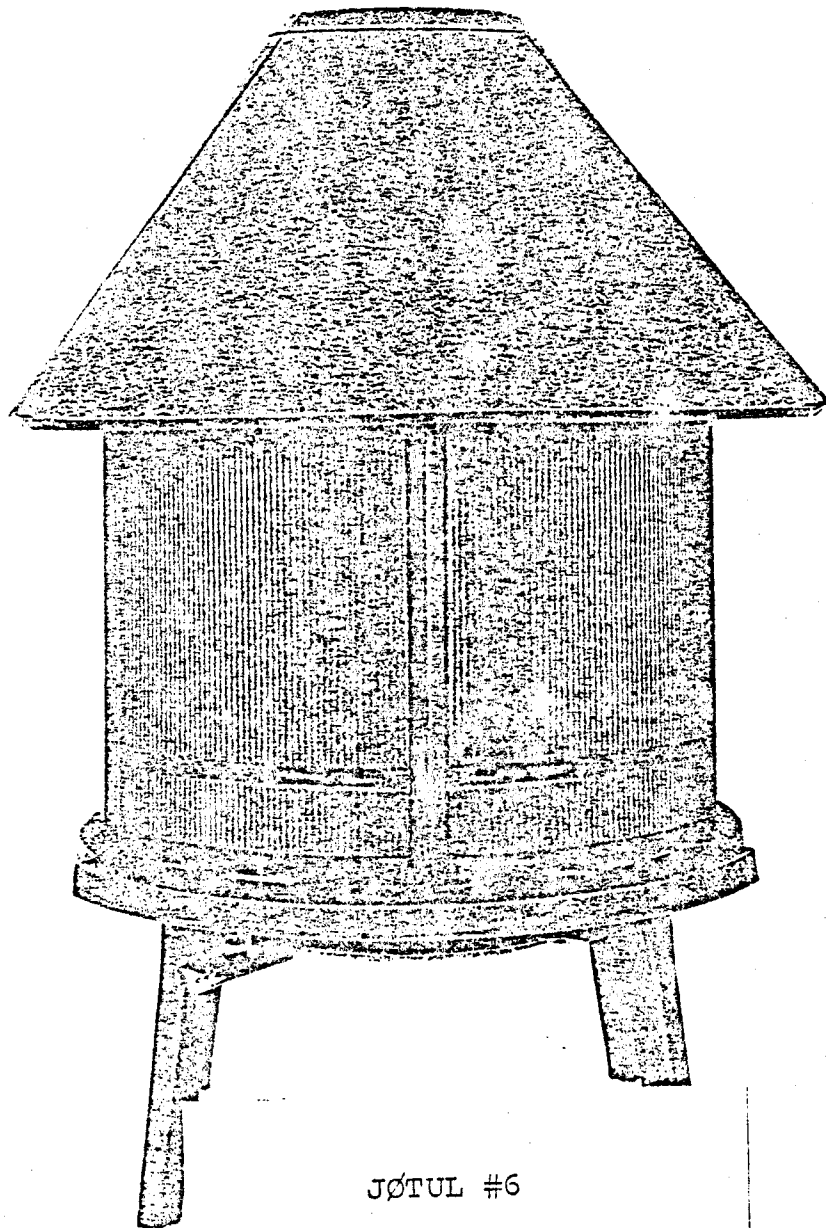
JØL #602



JØTUL MODEL NO. 602 STOVE

If the basic wedge shape of the firebox similar to Jøtul Model No. 602 is present, then stove to be entered must,

1. Have no bas relief at all similar to the rampant lion of the Jøtul No. 602;
2. Have no star in the vent center;
3. Have no vertical fluting;
4. Have no decorative top similar to the Jøtul No. 602;
5. Have a name conspicuously cast on the front face of the stove;
6. Have, if the name is suggestive of Norway or Scandinavia, then in a type size no less than one-half as great as the type size of the name, on the same side of the stove as the name appears, a statement regarding the actual country of manufacture cast in the stove; and
7. Have in any case a clearly visible notice of manufacturing locale cast in the exterior of the stove.



JØTUL #6

JØTUL MODEL NO. 6 STOVE

If basic cylinder with hooded top shape in proportions similar to Jøtul Model No. 6 is present, then to be entered the stove must:


- 1) Have a hood shape markedly different from the Jøtul No. 6;
- 2) Have no vertical fluting on the door;
- 3) Have a name conspicuously cast on the front face of the stove;
- 4) Have, if the name is suggestive of Norway or Scandinavia, then in a type size no less than one-half as great as the type size of the name, on the same side of the stove as the name appears, a statement regarding the actual country of manufacture cast in the stove;
- 4) Have in any case a clearly visible notice of manufacturing locale cast in the exterior of the stove.

31 JAN 12 P 3: 12

OFFICE OF THE SECRETARY
DOCKET / BSITC

ERRATA IN CEASE AND
DESIST ORDERS ISSUED
IN CERTAIN AIRTIGHT CAST-IRON
STOVES, INV. NO. 337-TA-69

Page 4, line 4 of each cease and desist order issued against Fireplace Distributors, Heritage Stove Co., Wood Heat, Hutch Manufacturing Co., Meteor Design International Inc., and Great Eastern Trading Co., should state: "(2) Have no star in the vent center." The original cease and desist orders contained a typographical error on page 4, line 4.


Kenneth R. Mason
Secretary

Dated: January 12, 1981

OPINION OF THE COMMISSION

Introduction

The Commission finds that there are violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) by respondents by reason of infringement of Jotul's common law and registered U.S. trademarks, passing off, and false or deceptive advertising. To remedy the violations that it has found, the Commission has issued an exclusion order and six cease and desist orders.

A. Unfair acts

The notice of investigation stated that this case was being instituted to determine whether section 337 is being violated in the unlawful importation into the United States of certain airtight cast-iron wood-burning and coal-burning stoves, or in their sale, by reason of the imported stoves:

- (a) violating Jotul's common law trademarks because such stoves are visually identical copies of Jotul's stoves;
- (b) being passed off as Jotul's product;
- (c) violating Jotul's registered U.S. trademarks; and
- (d) being falsely advertised.

Fourteen foreign and eleven domestic respondents were named in the original notice of investigation. On October 5, 1979, twenty-six additional respondents were added. On October 16, 1979, one additional foreign respondent was added.

During the course of the investigation, four respondents were terminated upon proof that they had ceased all involvement in the stove business. Twenty-five other respondents have executed consent order agreements or

settlement agreements. The other respondents failed to appear and were found by the administrative law judge to be in default. These defaulting respondents are the subject of this Action and Order.

At the Commission hearing of November 3, 1980, the Commission was informed that Kristia Associates, which had previously been a wholly-owned American company, was to have 100 percent of its stock purchased by Jotul of Norway. A new company, Jotul USA, Inc., incorporated in Delaware, and a subsidiary of Jotul (Norway) would take over all the functions of Kristia. In a submission dated November 25, 1980, counsel for Kristia confirmed that this transfer of stock ownership had taken place. By vote of the Commission on December 5, 1980, Jotul USA, Inc., was substituted for Kristia Associates as a party complainant.

In her review of the unfair acts of the respondents, the administrative law judge (ALJ) stated that evidence was received showing that at least one respondent is engaged in each of the four types of unfair methods of competition or unfair acts. The particular violations shown are discussed below.

1. Common law trademark infringement

In order to prove common law trademark infringement, a complainant must show that there is a imitation of the physical details and design of a product that causes consumer confusion, that the features imitated are "nonfunctional," and that the features have acquired a "secondary meaning." We agree with the ALJ's finding that the design features of the Jotul stoves are nonfunctional and have acquired secondary meaning and,

thus, are entitled to common law trademark protection. See Bliss v. Gotham Industries Inc., 316 F. 2d 848, 855 (9th Cir. 1963). The record contains a consumer survey establishing that the respondents' usage of the design features of Jotul stoves has resulted in public confusion. Twenty-three of the respondents have copied the arbitrary design features of Jotul and, thus, have engaged in common law trademark infringement. 1/

2. Passing off

To show passing off a complainant must show that the prospective customer was led to believe that he was buying the product of another. Passing off has been prohibited in domestic commerce through section 43(a) of the Lanham Act, 15 U.S.C. 1125(a), which prohibits false designations of origin and false descriptions of goods and services. See SK & F. Co. v. Premo Pharmaceutical Laboratories, Inc., 625 F. 2d 1055 (3rd. Cir. 1980). Passing off is also prohibited by section 5 of the Federal Trade Commission Act (15 U.S.C. 45). See FTC v. Real Products Corp., 90 F. 2d 617 (2d Cir. 1937). Although the Commission does not necessarily adopt the analogous case law on passing off under the Lanham

1/ The following respondents are found to have infringed Jotul's common law trademark because the trade dress of their stoves is virtually identical to the trade dress of Jotul:

Lee-Lin Enterprise Co., Ltd.; Genial Jade Industrial Co., Ltd.; Taiwan Active Enterprises Co., Ltd.; Pyramid International Co., Ltd.; Tinpin Trading Co.; Hermix Industrial Corp.; Firebird Hardware Inc.; Linmore Enterprise Co., Ltd.; Justin Taiwan Industries Co., Ltd.; Yulsan Industries Co., Ltd.; Cathay-Overseas Trading Co.; Fireplace Distributors, Inc.; Nan Shang Enterprise Co., Ltd.; Wood Heat; Great Eastern Trading Co.; Heritage Stove Co.; Hutch Manufacturing Co.; KFK Industries Co.; Formosa May, Inc.; Stratford Manufacturing Co., Ltd.; Meteor Design International, Ltd.; Collins Co., Ltd.; You Well Co. Ltd.

Act or the Federal Trade Commission Act in total, it does consider passing off an offense cognizable under section 337.

The ALJ found that 10 respondents had passed off their stoves as Jotul stoves by leading customers to believe that they were buying a Jotul product. The ALJ determined that some retail stove dealers had made representations to prospective customers that copies of Jotul stoves were in fact Jotul stoves, and that some respondents had used Jotul stove model numbers to advertise stoves made in Taiwan. The ALJ also cited instances where respondents had displayed in advertisements pictures of Jotul copies incorporating unique Jotul design features without disclosing the name of the manufacturer or the country of origin. We agree with the ALJ's conclusions that 10 respondents have engaged in passing off. 2/

3. Infringement of U.S. registered trademarks

The owner of a trademark is entitled to protection against the adoption and use by a competitor of the same or a similar mark or name. Jotul owns two U.S. registered trademarks, "Jotul" and "Jøtul". Westward Coach Mfg. Co. v. Ford Motor Co., 388 F. 2d 627, cert. den. 392 U.S. 927 (1967). The rights to these trademarks have been licensed to Kristia

2/ The following respondents engaged in passing off:
 Firebird Hardware; Formosa May Inc.; Cathay Overseas Trading Co.; Justin Taiwan Industrial Co., Ltd.; Linmore Enterprise Co., Ltd.; Taiwan Active Enterprises Co. Ltd.; Pyramid International Co., Ltd.; Stratford Manufacturing Co., Ltd.; Meteor Design International Ltd.; You Well Co. Ltd.

Associates. 3/ The ALJ found that the name "Jotul" has not become a generic term and that a substantial segment of the public associates "Jotul" with stoves made by a particular manufacturer. We agree with the ALJ that infringement of the registered U.S. trademark has been shown because respondents have sold stoves that have words that are the same as or similar to the Jotul registered trademarks. 4/

4. False and deceptive advertising

In order to show false and deceptive advertising, the complainant need not show that consumer confusion has occurred, but only that the acts are unfair or deceptive. See Zenith Radio Corp. v. FTC, 143 F. 2d 29 (7th cir. 1944). The ALJ found that several of the respondents had described the stoves imported from Taiwan as Scandinavian or had suggested a Scandinavian origin and that such acts were false and deceptive. The ALJ also found that some respondents' advertising that represents stove copies as identical to Jotul Stoves was false and deceptive. 5/ We adopt the ALJ's findings.

B. Restraint of trade

Section 337 prohibits unfair methods and unfair acts in the importation of articles into the U.S. which "restrain . . . trade and commerce in the United States." This prohibition is generally modeled after section 1 of the

3/ All rights of Kristia Associates to these trademarks were transferred to Jotul U.S.A. Inc. upon sale of Kristia to that corporation.

4/ The following two respondents infringed the U.S. registered trademarks of Jotul: Formosa May Inc.; Firebird Hardware.

5/ The following respondents engaged in false and deceptive advertising: Stratford Manufacturing Co., Ltd.; Justin Taiwan Industrial Co., Ltd.; Formosa May Inc.; Firebird Hardware Inc.; Heritage Stove Co.

Sherman Antitrust Act (15 U.S.C. 1). Although the Commission looks to the Sherman Act for guidance in its section 337 practice, it does not adopt all of the analogous case law. There are some differences in the wording of the two statutes. Section 1 of the Sherman Act states:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal

The Sherman Act requires that there be a contract, combination or conspiracy in restraint of trade. Thus, it is necessary to find that at least two parties are acting in concert to find a violation under that act. Section 337, on the other hand, requires only that a restraint be shown and contains no requirement of concerted action. It is certainly possible to conceive of the same level of restraint by one company acting alone. However, it obviously is more difficult to show that one company acting alone has the market power to restrain trade than to show market power if there is concerted action. Where an unfair course of conduct is independently pursued by a number of competitors, that conduct may have a cumulative negative effect on competition even though such conduct is not the product of an agreement.

The ALJ found that the complainants presented no evidence to show that respondents engaged in a restraint of trade and commerce in the United States. We agree with her conclusion. The allegations of unfair acts in the complaint were false and deceptive advertising, passing off, and common law and registered U.S. trademark infringement. None of these unfair acts has traditionally been considered to be restraints of trade per se. When not dealing with a per se restraint of trade, the antitrust laws have required the

application of the "rule of reason." Justice Brandeis, writing for the Supreme Court in Board of Trade of the City of Chicago v. U.S., 246 U.S. 231 (1918), explained the concept of an "unreasonable agreement" in restraint of trade as follows:

But the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine the question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. 246 U.S. at 238.

A leading commentator on antitrust law has stated the same proposition this way: "Taken literally the phrase seems to cover any restriction on the freedom of traders to make any bargain they please. But many laws restrict freedom of bargaining--laws against fraud or adulteration, laws dealing with trademark, or regulating hours of business or credit terms--yet would not normally be regarded as restraints of trade." 6/

In the present case there has been no showing that the respondents acted in concert or that any cumulation of individual restraints is suppressing competition in any major respect. No economic testimony was presented to show that the conditions of competition were adversely affected by the unfair acts. Many firms continue to supply consumers with stoves, and there is no reason to think that the competition in the industry will lessen. We agree

6/ Neale, The Antitrust Laws of the U.S. (2d ed. 1970), p. 19.

with the ALJ that the record does not establish that the respondents' acts have the effect or tendency to restrain trade or commerce.

C. The domestic industry

Section 337 in its literal terms encompasses all unfair methods of competition and unfair acts in the importation of articles into the United States. Since the adoption of section 337's predecessor statute, 7/ however, the unfair acts that have most often been the subject of Commission investigations have been infringement of U.S. patents. 8/ In previous patent-based investigations, the Commission has consistently limited the domestic industry to the domestic facilities of the patentee and any licensees devoted to the production of the patented product or the practice of the patented method. 9/ The Commission has also followed this definition of industry in other cases involving proprietary rights. See Certain Novelty Glasses, inv. no. 337-TA-55. In the present case the ALJ found that the domestic industry consists of that segment of the entire coal and wood-burning stove industry which was the target of the unfair acts and practices, i.e., Jotul U.S.A., its distributors and dealers. We agree with the ALJ's conclusion.

The legislative histories of both Section 316 of the 1922 act and section 337 of the 1930 act are unhelpful regarding the meaning of the term "industry." At the time of the adoption of both sections, the dominant

7/ Sec. 316 of the Tariff Act of 1922, 42 Stat. 943 (1922).

8/ See Musrey, Tariff Act's Section 337: Vehicle for the Protection and Extension of Monopolies, 5 Law & Pol. Int'l. Bus. 56, 64-65 (1973).

9/ See, e.g., Meprobamate, T.C. Publication 337 (1971); Certain Roller Units, 337-TA-44.

economic activity in the United States was manufacturing. Congress anticipated that the great majority of cases brought under section 337 would involve manufacturing industries. However, there is some indication that the law was not intended to be limited to the protection of manufacturing activity. In the floor debate on the 1922 law, Mr. Fordney, one of the principal sponsors of the act, referred to industries as including farming and mining as well as manufacturing. 10/ During the Senate debates on the 1930 act, Senator Simmons stated that section 337 applies "to all industries alike. Wage earner, farmer, stockman, producer, and legitimate business in general have everything to gain." 11/

It is clear that Congress distinguished between "industry" and "manufacturer" when it adopted the Tariff Act of 1930. For example, in section 332 of that act (19 U.S.C. 1332) the Congress instructed the Commission to ascertain certain information regarding "grower, producers, or manufacturers." Congress could have specified injury to "domestic manufacturers" in section 337. Instead, it decided to require injury to a "domestic industry."

The Senate Finance Committee's report on the Trade Act of 1974 makes clear that that law's objective is more than merely the protection of American manufacturers. In its discussion of the amendments to section 337, the Committee stated that "the public health and welfare and the assurance of competitive conditions in the United States economy must be the overriding

10/ 62 Cong. Rec. 12507.

11/ 71 Cong. Rec. 3542.

considerations in the administration of this statute." 12/ In the present case, it is both the complainants and the general public which are being harmed by the copying of the Jotul stoves, and we believe section 337 provides an effective remedy to prevent the continuation of the unfair acts that have been established.

The language used in at least one past Commission opinion indicated that an "industry" as used in section 337 is limited to domestic manufacturing activities, at least insofar as the case was patent-based. See Certain Ultra-Microtome Freezing Attachments, 337-TA-10 (1976). The precise issue raised in the present case--whether a service industry can be an industry within the meaning of section 337--was not expressly presented in that case.

The Commission investigative attorney has urged the Commission to adopt as the test for domestic industry "any systematic activity which significantly employs use of American land, labor, and capital for the creation of value." We agree that in this case there is clearly a significant employment of land, labor, and capital for the creation of value. The industry here is Jotul U.S.A., the importer, and a network of 15 distributors and 750 dealers throughout the United States. The economic activity that they engage in is more than simply selling the stoves. A major part of Jotul's function is to repair and test stoves. After arriving by ship from Norway, the Jotul stoves are brought to Jotul USA's main warehouse in Portland, Maine, and are afterwards sent to several warehouses located in other parts of the United States. At the Portland facility, the staff repairs and tests the stoves,

12/ Trade Reform Act of 1974: Report on the Committee on Finance . . . , S. Rept. No. 93-1298 (93d Cong., 2d sess.), 1974, p. 197.

designs advertising, and print brochures, including a service manual. Jotul U.S.A. also instructs its dealers on the safe installation of wood-burning stoves. These repair and installation aspects of this retail trade distinguish this industry from many potential industries because the value added domestically is significant. 13/

A related issue is whether the industry in this case is "domestic." As we have mentioned, Kristia Associates, the importer of Jotul stoves, has now been sold to Jotul of Norway and has become its subsidiary. This change to foreign ownership does not in itself have the effect of stripping the industry of its domestic status. The bulk of the industry consists of the distributors and retailers which sell and service Jotul stoves. The retailers and distributors employ the vast majority of the workers in the domestic industry. These companies remain domestically owned and operated, and they employ American labor. Furthermore, Jotul USA itself continues to be a domestic company because it employs a substantial amount of American labor, has shipping and servicing facilities in Portland, Maine, and is a Delaware corporation. We therefore are of the view that the change in ownership of Kristia does not affect our finding of a domestic industry when account is taken of the other domestic aspects of the industry.

In short, we believe that enough domestic economic activity (e.g. as shown in this case by the relative importance of value added domestically) has been shown here to consider the importer-distributor-dealer network for Jotul stoves as a domestic industry within the meaning of section 337.

13/ The exact amount of value added involves confidential business information.

D. Injury

The ALJ found that there is substantial injury to the domestic industry and that injury is directly attributable to the unfair acts. We agree with the ALJ. Lost sales were found by the ALJ to be caused by the false advertising and deceptive practices of the respondents in selling copies of Jotul stoves. Since 1977 Kristia's sales in the United States have decreased despite a growing United States market for wood-burning stoves, thus injuring Kristia and its sales network. In 1977 foreign copies of Jotul stoves began to appear on the market. During 1978 Taiwanese cast-iron stoves valued at over \$8 million were imported into the United States. In addition to declining sales, the reputation of Jotul stoves has suffered by the sale of Jotul copies of inferior quality. The loss of Jotul's reputation has injured Kristia Associates and its sales network.

E. Efficient and economic operation

Section 337 requires that the industry alleged to be injured by the unfair acts be "efficiently and economically operated." See section 337(a).

The ALJ made findings that the domestic industry is operated in an efficient and economic manner. We agree with her conclusion that there is sufficient evidence on the record to establish that the importer-distributor-dealer network for selling and servicing Jotul stoves is an efficient and economic operation. The staff of Jotul USA uses modern equipment to repair and test stoves, and for advertising and printing. Jotul USA and the dealers have spent substantial amounts of money advertising its stoves and building public goodwill toward its products. Furthermore, Jotul

USA and its dealers have spent considerable time and money to ensure that prompt service is available for Jotul stoves.

F. The respondents found to be in default

Of the remaining 48 respondents, the ALJ found that 27 respondents have engaged in unfair acts and ruled them to be in default. We agree that 24 of these 27 respondents should be found to be in violation of section 337. The Commission is making no finding at this time regarding violation of section 337 by the other three respondents because they have entered into consent order agreements. (See Motions 69-23 and 69-30.) Although those consent order agreements were presented to the Commission and rejected by it on October 15, 1980, the agreements have been renegotiated to take into account the Commission's objections. Consideration of those agreements will be addressed in a separate Commission action.

The ALJ also recommended that the remaining 22 respondents be dismissed because no evidence of violation had been introduced against them. We believe that none of these respondents should be dismissed. Three of the respondents for which the ALJ would make a finding of no violation have entered into settlement agreements, which were before the ALJ at the time of her recommended determination and were accepted by the Commission on August 12, 1980. One other respondent, Huan Enterprise Corp., was terminated as a party on July 11, 1980, because it had ceased all stove shipments to the United States. The other respondents who were found not to be in violation by the ALJ all have signed consent order agreements. Because those agreements have been renegotiated, no determination of violation regarding those respondents

is being made at this time. An Action and Order regarding those agreements will be issued separately on January 12, 1981.

G. Remedy

1. The requested remedy

The complainants and the Commission investigative attorney (IA) requested identical relief for all respondents except one. They requested that an exclusion order be issued against stoves being imported in violation of section 337 and that cease and desist orders be imposed on the domestic companies for falsely advertising, passing off, or infringing common law or registered U.S. trademarks. We accept the request of the complainants and the Commission investigative attorney and are issuing both an exclusion order and cease and desist orders.

Complainants and the IA argue that exclusion orders are the only effective means to prevent other foreign companies or other importers from entering the U.S. market with copies of stoves that have been found to violate section 337. The exclusion orders that they propose contain pictures and descriptions of the complainants' products and the changes which are required to make them acceptable. These detailed exclusion orders are designed to enable Customs officials to easily identify and exclude infringing stoves, while allowing noninfringing stoves to enter the United States.

Cease and desist orders are urged by complainants and the IA for domestic respondents since the exclusion orders will not prevent them from engaging in further unfair acts. This is because these respondents are accused of violations that occurred in the United States subsequent to but

related to importation. Complainants and the IA argue that the issuance of these cease and desist orders is consistent with the position taken by the majority of the Commission in Doxycycline, 337-TA-3.

2. The Doxycycline opinion

Section 337(f) provides:

In lieu of taking action under subsections (d) and (e), the Commission may issue . . . an order directing such person to cease and desist from engaging in the unfair methods or acts involved

In Doxycycline, the Commission did not issue both an exclusion order and a cease and desist order. But the facts in Doxycycline are different in major respects from those in the present case. In Doxycycline infringement of one claim of one patent was involved. The issue facing the Commission was whether the Commission could impose both an exclusion order and a cease and desist order simultaneously for the same violation of the statute.

In this case, there are four distinct unfair acts or unfair methods of competition--false advertising, passing off, common law trademark infringement, and registered U.S. trademark infringement. Each of these separate acts requires application of separate remedies. Our decision in this case is consistent with the intent of Congress that the Commission remedy should be that which is necessary to prevent the unfair acts from continuing. ^{14/} Resort to an all-encompassing exclusion order would constitute an excessive form of relief at this time for several of the violations we have found. For each different count, there are different

^{14/} Ibid., p. 198.

specific allegations made against each respondent as to how each respondent has violated the statute. Thus, in making its decision regarding remedy in this case, the Commission need not reach the issue it addressed in

Doxycycline.

3. Heritage Stoves and Fireplace Distributors

The IA and the complainants disagree as to the remedy that should be imposed for respondents Heritage Stove Co. and Fireplace Distributors. The IA requests that the Commission impose a requirement for marking the stoves that is the same as the requirement imposed on Oriental Kingsworld and Franklin Cast Products as a result of the settlement agreements they signed. While the other respondents are required to place the country of origin on the front of the stove, Oriental and Franklin were allowed to place it on one side. The reason they were given that treatment was that Franklin has a trademark pending on the word "Scandia," which is placed on the front of its stoves. Heritage has a registered trademark on the name "Fjord," which is placed on the front of the stoves, and Fireplace Distributors is Heritage's distributor. Although Heritage and Fireplace Distributors were willing to enter into an agreement on the same basis as Oriental Kingsworld and Franklin, the complainants refused.

We agree with the IA that Heritage and Fireplace Distributors should be treated in essentially the same way as Oriental and Franklin. In fact, Heritage and Fireplace Distributors are in a stronger position than Oriental and Franklin because they have a trademark that has been issued, while Franklin only has a trademark application pending. Heritage and Fireplace

Distributors have been cooperative in trying to reach a settlement and in our view should not be penalized unnecessarily.

H. The public interest

Even where the Commission finds a violation of section 337, it may decline to issue a remedy if it also finds that certain "public interest" factors preclude a remedy. The "public interest" factors set out in section 337 (d) are: 1) the effect of an order upon the public health and welfare; 2) the effect on competitive conditions in the U.S. economy; 3) the effect on production of like or directly competitive articles in the United States; and 4) the effect on U.S. consumers.

The IA and the complainants argue that there are no overriding public interest factors which would warrant the denial of the proposed remedies. Consumers are greatly injured by the trademark infringement/passing off/false advertising that was found to exist. We agree. Additionally, the consumers are being deceived into thinking they are getting a high-quality Jotul product when in fact they are buying an inferior Taiwanese stove. There is a public interest in promoting the conservation of oil and natural gas by encouraging the efficient use of high-quality, wood-burning stoves, including those that are manufactured abroad in countries such as Norway or Taiwan. The record in this case shows that the high-quality Jotul stoves are more fuel efficient than the Taiwanese stoves being imported in violation of section 337. Since there is no question that the public demand for such stoves can be met by non-infringing stoves, the public interest would therefore best be served by imposing the above remedies against the respondents.

I. Bonding

Section 337(g)(3) provides for entry of articles under bond during the presidential review period. No explicit standards are set for the level of the bond in the statute. The Senate Finance Committee report on the 1974 amendments to section 337 suggests, however, that the bond be set at a level sufficient to "offset any competitive advantage resulting from the unfair method of competition or unfair act enjoyed by the persons benefiting from the importation." 15/

The level of bonding initially requested by both the IA and the complainants was 300 percent ad valorem. After a series of questions at the hearing of November 3, the IA and complainants agreed that the level that they were actually seeking to offset the competitive advantage of the Taiwanese stoves is 200 percent. Both parties asked for the 200 percent figure in their posthearing briefs. The 200 percent bonding level was arrived at by taking the median weighted prices of respondents' stoves compared with those of the complainants. We agree that the 200 percent bond is the correct amount to offset the competitive advantage.

15/ S. Rep. No. 98, 1298, 93rd Cong., 2d Sess. 198 (1974).

