

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

In the Matter of)
)
) Investigation No. 337-TA.-137
CERTAIN HEAVY-DUTY)
STAPLE GUN TACKERS)
)
)

COMMISSION ACTION AND ORDER

Background

On February 24, 1983, the Commission instituted investigation No. 337-TA-137, Certain Heavy-Duty Staple Gun Tackers, to determine whether there is a violation of section 337(a) in the unauthorized importation into and sale in the United States of certain heavy-duty staple gun tackers. 48 Fed Reg. 7,826-27 (1983). The investigation was based on a complaint filed by Arrow Fastener Co., Inc. (Arrow), of Saddle Brook, New Jersey, on January 7, 1983.

Twenty-three respondents were named in the original notice of investigation. Four of the respondents were foreign manufacturers of the subject merchandise: Test-Rite Int'l. (Taiwan) Ltd.; Test-Rite Automotive Ltd.; Taiwan Royal United International; Chen Dah Machinery Ltd. The other 19 respondents were alleged to be involved in importation and/or sales in the United States of heavy duty staple gun tackers: Test-Rite Products Corp., of New Jersey; Alltrade, Inc., of California; Wal-Mart Stores Inc., of Arkansas; Western Auto Supply, of Missouri; Central Hardware Co., of Missouri; The Handyman of California, d/b/a The Handyman Hardware; Handyman Supply Inc. The Handyman Hardware, of Ohio; Meijer Thrifty Acres, of Michigan; Dart Drug Corp., of Maryland; Menards, Inc., d/b/a Menards Cashway Lumber, of Iowa; Aco Inc., of Michigan; Venture Stores Inc., of Missouri; L.G. Distributors, Inc., d/b/a L.G. Cook Distributors of Michigan; Fred Meyer Inc., of Oregon; Ranch

Wholesale Supply, Inc., d/b/a Longmont Big R, of Colorado; Stop & Shop Companies, Inc., of Massachusetts; Waverly Screw & Hardware, Inc., d/b/a Lustre Line Products, of Pennsylvania; Pep Boys-Manny, Moe & Jack, A Pennsylvania and California; and Tractor Supply Co., a subsidiary of TSC Industries, Inc., of Tennessee.

Five of the original respondents were alleged to be infringing Arrow's trademark in the pictorial of the Model T-50 staple gun, in addition to infringement of Arrow's trademark in the configuration of the Model T-50 staple gun and passing off. The other eighteen were alleged only to be infringing Arrow's trademark in the configuration of the Model T-50 staple gun and to be passing off.

On June 13, 1983, the complaint was amended to add three more firms as respondents to the investigation. 48 Fed. Reg. 28,562 (June 22, 1983). The three respondents were Moss Manufacturing, Inc., of Florida; Quinn Products of Illinois; and Tab Merchandise Corp., of Missouri. These firms were alleged to infringe Arrow's trademark in the configuration of the Model T-50 staple gun tacker. On June 30, 1983, the complaint was amended to add two additional respondents alleged to be manufacturing and exporting in the subject staple gun tackers. The two respondents added by the second amendment to the complaint were Quality Master and Upmaster, which are related to Test-Rite Int'l. (Taiwan) Ltd. 48 Fed. Reg. 31,308 (July 7, 1983).

On June 21, 1983, respondent Handyman Supply, Inc. was terminated on the basis that discovery had shown that Handyman was not engaged in the importation or sale of the subject merchandise. By the time of the hearing before the presiding officer-, all but eleven of the respondents had settled with Arrow, and by the time the presiding officer's initial determination was issued, only ten respondents remained. The eleven respondents remaining at the time of the evidentiary hearing were:

Central Hardware Co., L.G. Distributors, Inc., Fred Mayer-, Inc., Meijer-, Inc., Moss Manufacturing, Inc., Ranch Wholesale Supply, Inc., Stop & Shop Companies, Inc., Tab Merchandise Corp., Taiwan Royal United International, Western Auto Supply, Inc., and Quinn Products, Inc. Quinn Products settled with Arrow, and was terminated as a respondent prior to the issuance of the presiding officer's initial determination.

The evidentiary hearing on violation was held from September 9, 1983, through September 13, 1983. Counsel for the complainant and the Commission investigative attorney appeared and presented evidence. None of the ten remaining respondents participated in the hearing.

The presiding officer issued his initial determination on violation on November 28, 1983. He found that there was a violation of section 337 in the importation into and sale in the United States of the subject heavy-duty staple gun tackers, which infringe complainant Arrow's common law trademark in the configuration of its Model T-50 staple gun. On December 27, 1983, the Commission determined not to review the initial determination. 49 Fed. Reg. 668 (Jan. 5, 1984). The parties were requested to file written submissions on remedy, public interest, and bonding by January 26, 1984. Complainant, the Commission investigative attorney, and former respondent Test-Rite Int'l (Taiwan) Ltd. (Test-Rite), filed written submissions concerning remedy, public interest, and bonding. No submissions were received from any of the other respondents.

Action

Having determined that the issues of remedy, the public interest, and bonding are properly before the Commission and having reviewed the written submissions filed on remedy, the public interest, and bonding and those portions of the record relating to those issues, the Commission on

February 13, 1984, determined to issue a general exclusion order prohibiting entry into the United States, except under license, of heavy-duty staple gun tackers that infringe complainant Arrow's common law trademark in the configuration of its Model T-50 staple gun. The Commission also determined that the public interest factors enumerated in section 337(d) (19 U.S.C. §1337(d)) do not preclude issuance of a general exclusion order, and that the bond during the Presidential review period should be in the amount of 116 percent of the entered value of the imported heavy-duty staple gun tackers.

Order

Accordingly, it is hereby ORDERED THAT-

1. Heavy-duty staple gun tackers which infringe complainant Arrow Fastener Company's common law trademark in the configuration of its Model T-50 staple gun tacker are excluded from entry into the United States, except under license of the owner of the trademark;
2. The articles ordered to be excluded from entry into the United States shall be entitled to entry under bond in the amount of 116 percent of the entered value of the subject articles from the day after this order is received by the President pursuant to subsection (g) of section 337 of the Tariff Act of 1930, until such time as the President notifies the Commission that he approves or disapproves this action, but, in any event, not later than 60 days after the date of receipt of this action;
3. The Secretary shall serve copies of this Commission Action and order, and the Opinion of the Commission, upon each party of record to this investigation, and publish notice thereof in the Federal Register;
4. The Commission may amend this order in accordance with the procedure described in section 211.57 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 5211.57).

By order of the Commission.

Kenneth R. Mason
Secretary

Issued: February 24, 1984