

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-552]

In the Matter of Certain Ink Markers and Packaging Thereof; Issuance of a General Exclusion Order and a Cease and Desist Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order and a cease and desist order in the above-captioned investigation and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT:

Jonathan F. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 205-3112. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: This trademark-based section 337 investigation was instituted by the Commission based on a complaint filed by Sanford, L.P. of Freeport, Illinois ("Sanford" or "complainant"). 69 FR 52029 (August 24, 2004). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("Section 337") in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink markers and packaging thereof by reason of infringement of U.S. Trademark Registration Nos. 807,818 and 2,721,523 and also by reason of infringement of trade dress. The notice of investigation identified 12 respondents. On November 10, 2004, the presiding administrative law judge

("ALJ") granted a motion to add three respondents to the investigation. The Commission determined not to review this initial determination ("ID"). 69 FR 75342 (December 16, 2004). Each respondent was accused of violating Section 337 by infringing Sanford's trade dress. Certain respondents were also accused of infringing one or more of complainant's registered trademarks.

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

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

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

The Commission determined, on September 8, 2005, not to review the July 25, 2005 ID (Order No. 30) finding a violation of Section 337, and established a schedule for filing submission on the issues of remedy, the public interest and bonding. 70 FR 54079 (Sept. 13, 2005). The Commission also denied complainant's motion for leave to file a reply. Id. Sanford and the IA filed timely written submissions regarding the issues of remedy, the public interest, and bonding. Sanford filed a reply submission.

Having reviewed the record in this investigation, including the parties' written submissions and responses thereto, the Commission determined

that the appropriate form of relief in this investigation is general exclusion order and a cease and desist order to one respondent, Mon Ami. The general exclusion order prohibits the entry for consumption of certain ink markers and packaging thereof that bear SHARPIE Trademarks or Sanford's protected trade dress, as well as any marks or trade dress confusingly similar thereto or that are otherwise misleading as to source, origin or sponsorship. The cease and desist order prohibits respondent Mon Ami from importing, selling, marketing, advertising, distributing, offering for sale, transferring (Except by exportation), and soliciting U.S. agents or distributors for imported ink markers and packaging thereof that bear Sanford's protected trade dress, are confusingly similar thereto, or that are otherwise misleading as to source, origin or sponsorship.

The Commission determined that the statutory public interest factors enumerated in subsections (d)(1) and (f)(1) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(d)(1) and (f)(1)) do not preclude the issuance of these remedial orders. The Commission also determined that the excluded ink markers may be imported and sold in the United States during the Presidential review period under bond in the amount of 100 percent of the entered value of such items. The Commission's order and opinion in support thereof were delivered to the President and the United States Trade Representative on the day of their issuance.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.50 of the Commission's Interim Rules of Practice.

By order of the Commission.

Issued: October 25, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

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