

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN PORTABLE POWER
STATIONS AND PACKAGING
THEREFOR

Inv. No. 337-TA-563

LIMITED EXCLUSION ORDER

The Commission instituted this investigation on March 14, 2006, based on a complaint filed by Roadmaster (USA) Corp. of Eatontown, New Jersey. *71 Fed. Reg.* 13166 (March 14, 2006). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, in the importation into the United States, sale for importation, and sale within the United States after importation of certain portable power stations and packaging therefor by reason of: (1) infringement of U.S. Design Patent No. D469,739 (“the ‘739 patent”); (2) infringement of U.S. Trademark Registration No. 2,594,538 (“the ‘538 mark”); and (3) infringement of U.S. Copyright Registration No. VA-1-261-495 (“the ‘495 copyright”). The complaint further alleges the existence of a domestic industry. The Commission’s notice of investigation names Sinochem Ningbo, Ltd. (“Sinochem”), of Ningbo, China, as the respondent.

The presiding administrative law judge ("ALJ") issued an initial determination on July 12, 2006, finding the respondent in default, because the respondent did not reply to the complaint or notice of investigation, and because the respondent did not reply to a show cause order issued by the ALJ on May 24, 2006. The Commission declined to review the ALJ's determination that respondent Sinochem, the only respondent named in the investigation, defaulted. Roadmaster seeks relief limited to Sinochem. Since all of the requirements of 19 U.S.C. § 1337(g)(1) are satisfied, the Commission may presume that the facts alleged in the complaint are true and issue an exclusion from entry order and/or a cease and desist order.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of infringing portable power stations and packaging therefor that are covered by one or more of the '739 patent, the '538 mark, and the '495 copyright, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Sinochem. The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(g)(1) do not preclude issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of 100% of the entered value

of the portable power stations and packaging therefor that are subject to this Order.

Accordingly, the Commission hereby **ORDERS** that:

1. Portable power stations and packaging therefor that infringe one or more of the '739 patent, the '538 mark, and the '495 copyright,¹ that are manufactured abroad and/or imported by or on behalf of Sinochem, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, shall be excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent and copyright, or until such date as the trademark is abandoned, canceled, or rendered invalid or unenforceable, except under license of the patent, copyright or trademark owner or as provided by law.

2. Products that are excluded by paragraph 1 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100% of the entered value pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), from the day after this Order is received by the United States Trade Representative as delegated by

¹ Copies of the registered design patent, trademark, and copyright are attached hereto.

the President, 70 *Fed. Reg.* 43251 (July 21, 2005), and until such time as the United States Trade Representative notifies the Commission that this action is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this action.

3. In accordance with 19 U.S.C. § 1337(1), the provisions of this Order shall not apply to portable power stations and packaging therefor that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

4. Complainant Roadmaster shall file a written statement with the Commission, made under oath, each year on the anniversary of the issuance of this Order stating whether they continue to use the aforesaid trademark in the United States in connection with portable power stations and packaging therefor and whether the aforesaid trademark has been abandoned, canceled, or rendered invalid or unenforceable.

5. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and U.S. Customs and Border Protection.

7. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.



Marilyn R. Abbott
Secretary

Issued: November 9, 2006