

**In the Matter of**

**CERTAIN CLOISONNE JEWELRY**

**Investigation No. 337-TA-195**



**USITC PUBLICATION 1822**

**MARCH 1986**

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**COMMISSIONERS**

**Paula Stern, Chairwoman**

**Susan W. Liebeler, Vice Chairman**

**Alfred E. Eckes**

**Seeley G. Lodwick**

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**Anne E. Brunsdale**

**Address all communications to**

**Kenneth R. Mason, Secretary to the Commission  
United States International Trade Commission**

**Washington, DC 20436**

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UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC 20436

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In the Matter of )  
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CERTAIN CLOISONNE JEWELRY )  
\_\_\_\_\_ )

Investigation No. 337-TA-195

NOTICE OF COMMISSION ISSUANCE OF  
GENERAL EXCLUSION ORDER

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of a general exclusion order.

SUMMARY: 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 has determined to issue a general exclusion order prohibiting entry into the United States, except under license of the copyright owner, of cloisonne jewelry which infringes U.S. Copyright Registration Nos. VA 108-466, VA 108-465, VA 107-361, VA 105-485, VA 116-449, VA 137-741, VA 137-743, VA 116-448, VA 137-749, VA 137-758, VA 116-451, VA 137-748, VA 137-747, VA 116-447, VA 137-757, VA 137-744, VA 137-755, VA 137-740, or VA 116-450.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0359.

SUPPLEMENTARY INFORMATION: On March 6, 1985, the administrative law judge issued an initial determination that there is a violation of section 337 in the importation and sale of certain cloisonne jewelry by reason of copyright infringement. On April 8, 1985, the Commission determined not to review the administrative law judge's determination as to violation of section 337. 50 F.R. 15235 (April 17, 1985). The parties were requested to file written submissions on remedy, the public interest, and bonding. Complainant Laurel Burch, Inc., and the Commission investigative attorney have submitted briefs on remedy, the public interest, and bonding. The U.S. Customs Service has filed a submission on the issue of remedy. No other submissions were received.

Copies of the Commission's Action and Order, the Commission Opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are 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, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

By order of the Commission.



Kenneth R. Mason  
Secretary

Issued: June 6, 1985



Fourteen parties were named as respondents in the notice of investigation. Four foreign respondents -- (1) Chen Wei Handicrafts Co., Ltd. of Taiwan, (2) Ching Sheng Co., Ltd. of Taiwan, (3) Chen Will Handicraft Co., Ltd. of Taiwan, and (4) Giocoso Products Co., Ltd. of Taiwan -- were alleged to be foreign manufacturers and/or exporters of the allegedly infringing jewelry. One foreign respondent, National Quality Co., Ltd. of Taiwan was alleged to be an exporter of the allegedly infringing jewelry. Eight domestic respondents and one foreign respondent -- (1) Humber Pacific of Vancouver, Canada, (2) Perfect Pearl Company of Illinois, (3) Perfect Pearl Company of New York, (4) Diamond Sales of Connecticut, (5) Mr. Daniel Vianale of New York, (6) Il Hwa of New York, (7) Mr. David Rasnick of California, (8) Far Eastern Traders of New York, and (9) The Answer Ltd. of Wisconsin -- were alleged to be engaged in the importation into and/or sale in the United States of the allegedly infringing jewelry.

On August 23, 1984, the presiding administrative law judge (ALJ) issued an initial determination (ID) (Order No. 4) granting a joint motion to terminate the investigation as to respondent The Answer, Ltd on the basis of a settlement agreement. The Commission issued a notice of its determination not to review the ID on September 20, 1984. 49 F.R. 37857 (Sept. 26, 1984). On November 27, 1984, the ALJ issued an ID (Order No. 6), granting complainant's motion to terminate this investigation as to respondent Humber Pacific. The Commission issued notice of its determination not to review the ID on December 26, 1984. 50 F.R. 358 (Jan. 3, 1985).

Complainant filed a motion (Motion No. 195-3) for summary determination as to all issues in this investigation on November 6, 1984. The motion was accompanied by a supporting memorandum, affidavits, and exhibits. The Commission investigative attorney filed a response in support of the motion. Although none of the respondents had formally entered an appearance in the investigation, certain letters were received from respondents Daniel Vianale and Il Hwa, David Rasnick, Humber Pacific, Chen Wei, and Chen Will. None of these letters were verified or under oath. However, the ALJ considered the allegations therein in deciding the motion for summary determination. There are no affidavits or exhibits on the record apart from those submitted by complainant.

On March 6, 1985, the ALJ issued his ID granting complainant's motion for summary determination. The ALJ concluded that there were no genuine issues of material fact, and that therefore complainant was entitled to summary determination. He found that there was a violation of section 337 in the importation and sale of the subject cloisonne jewelry. On April 8, 1985, the Commission determined not to review the ID, which thereupon became the Commission's determination on violation of section 337. 50 F.R. 15235 (April 17, 1985). The issue of violation having been decided by the Commission's determination not to review the ID dealing with violation of section 337, the issues remaining for the Commission to decide are those of remedy, the public interest, and bonding.

#### 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 has determined to issue a general exclusion order prohibiting entry into the United States, except under license of the copyright owner, of cloisonne jewelry which infringes U.S. Copyright Registration Nos. VA 108-466, VA 108-465, VA 107-361, VA 105-485, VA 116-449, VA 137-741, VA 137-743, VA 116-448, VA 137-749, VA 137-758, VA 116-451, VA 137-748, VA 137-747, VA 116-447, VA 137-757, VA 137-744, VA 137-755, VA 137-740, or VA 116-450.

The Commission has also determined that the public interest factors enumerated in section 337(d) (19 U.S.C. § 1337(d)) do not preclude issuance of the aforementioned general exclusion order, and that the bond during the Presidential review period should be in the amount of 900 percent of the entered value of the articles concerned.

#### Order

Accordingly, it is hereby ORDERED THAT--

1. Cloisonne jewelry which infringes U.S. Copyright Registration Nos. VA 108-466, VA 108-465, VA 107-361, VA 105-485, VA 116-449, VA 137-741, VA 137-743, VA 116-448, VA 137-749, VA 137-758, VA 116-451, VA 137-748, VA 137-747, VA 116-447, VA 137-757, VA 137-744, VA 137-755, VA 137-740, or VA 116-450, is excluded from entry into the United States for the remaining term of the copyrights, except under license of the owner of the copyrights;
2. The articles ordered to be excluded from entry into the United States shall be entitled to entry under bond in the amount of 900 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 Commission Opinion in support thereof upon each party of record to this investigation and publish notice thereof in the Federal Register; and
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. § 211.57).

By order of the Commission.



Kenneth R. Mason  
Secretary

Issued: June 6, 1985





order to disrupt legitimate trade. <sup>4/</sup> Therefore, the Commission has since required that a complainant seeking a general exclusion order prove "both a widespread pattern of unauthorized use of its patented invention [viz. unauthorized imports or sales of infringing goods] and certain business conditions from which [the Commission] might reasonably infer that foreign manufacturers other than the respondents to the investigation may attempt to enter the U.S. market with infringing articles." <sup>5/</sup>

In Spray Pumps, the Commission stated that in order to establish a widespread pattern of unauthorized use, there must be:

- (1) a Commission determination of unauthorized importation into the United States of infringing articles by numerous foreign manufacturers; or
- (2) pending foreign infringement suits based upon foreign patents which correspond to a domestic patent in issue; and
- (3) other evidence which demonstrates a history of unauthorized foreign use of the patented invention. <sup>6/</sup>

The evidence of record amply demonstrates widespread unauthorized sales of infringing imported cloisonne jewelry. The ALJ not only determined that each of the named respondents either manufactured, exported, imported, or sold infringing jewelry, but also that infringing jewelry is widely available from persons and establishments other than the named respondents. <sup>7/</sup>

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<sup>4/</sup> Spray Pumps, supra, at 18.

<sup>5/</sup> Id.

<sup>6/</sup> Id. at 18-19 (footnotes omitted).

<sup>7/</sup> Initial Determination (ID) at 57-58.

In order to establish the "business conditions" referred to in Spray Pumps as a prerequisite for the issuance of a general exclusion order, the Commission has considered:

- (1) an established demand for the product in the U.S. market and conditions of the world market;
- (2) the availability of marketing and distribution networks in the United States for potential foreign manufacturers;
- (3) the cost to foreign entrepreneurs of building a facility capable of producing the articles;
- (4) the number of foreign manufacturers whose facilities could be retooled to produce the article; or
- (5) the cost to foreign manufacturers of retooling their facility to produce the articles. <sup>8/</sup>

The record demonstrates established demand in the United States for complainant's copyrighted cloisonne jewelry, as evidenced by the large number of street vendors, small boutiques, and major merchandising outlets which sell complainant's jewelry. Complainant's production and sales of jewelry bearing the copyrighted designs have increased significantly from 1981 to 1983, demonstrating acceptance of the product. <sup>9/</sup> Marketing and distribution channels for the infringing jewelry are available - not only to retail outlets, but also through large importers, wholesalers, and street vendors. Barriers to entry are low, requiring simply a new mold, which can be produced

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<sup>8/</sup> Spray Pumps, supra, at 18-19.

<sup>9/</sup> See ID at 61-63.

from a drawing or a sample and put into production within a week or two. <sup>10/</sup> A significant number of foreign manufacturers have the capacity to produce infringing jewelry within a short period of time. <sup>11/</sup> Therefore, the facts of this case satisfy the criteria set forth in Spray Pumps for the issuance of a general exclusion order. <sup>12/</sup>

The U.S. Customs Service has filed a submission on remedy in which it requests that, should the Commission issue a general exclusion order, it include a provision similar to that contained in the order issued in the Sausage Casings investigation. <sup>13/</sup> Customs has requested this language because the imported infringing items are not necessarily exact duplicates of the copyrighted articles.

We determine that a provision inviting prospective importers to petition the Commission for a determination of the applicability of an exclusion order is unnecessary in this investigation. The inclusion of that language in the Sausage Casings investigation was based on the fact that no simple or administratively feasible inspection by Customs would have revealed whether

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<sup>10/</sup> ID at 69.

<sup>11/</sup> Chairwoman Stern and Vice Chairman Liebeler note that the ease with which new manufacturers and importers can produce and sell infringing cloisonne jewelry in the United States would make a limited exclusion order an ineffective remedy in this case.

<sup>12/</sup> ID at 69.

<sup>13/</sup> Inv. Nos. 337-TA-148/169, Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product, USITC Pub. No. 1624, 1984. That order provided, in pertinent part:

Persons desiring to import small caliber cellulose skinless sausage casings into the United States may petition the Commission to institute such further proceedings as may be appropriate in order to determine whether the sausage casings sought to be imported do not fall within the scope of paragraph (1) of this order, and therefore should be allowed entry into the United States.

imported sausage casings were manufactured in accordance with complainant's patented process, and thus whether the order applied to exclude them from entry. <sup>14/</sup> By contrast, a determination of infringement in this investigation is readily made by a simple visual comparison of the imported articles with the copyrighted designs. <sup>15/</sup> Moreover, complainant has made clear its willingness to supply Customs with photographs and physical samples.

The Customs Service has also noted that there may be problems with enforcement of a general exclusion order because of the possibility of

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<sup>14/</sup> We note that the "Sausage Casings language" suggested by the Customs Service was never intended to be used in the factual situation presented by this investigation. The Sausage Casings investigation, and Certain Multicellular Plastic Film, Inv. No. 337-TA-54, USITC Pub. No. 987 (1979), which incorporated a similar provision in the exclusion order, both involved process patents. It was clear from the record in those cases that it would be extremely difficult, if not impossible, to determine from an examination of the product by Customs whether a particular article was made in accordance with the patented process, and therefore subject to exclusion. It was also clear that a substantial investment in a particular process would have to be made in order to produce the product in commercial quantities in accordance with a process other than the patented process. Rule 211.54 of the Commission's Rules of Practice and Procedure provides an opportunity for a prospective importer who was a respondent in the Commission investigation to seek an advisory opinion from the Commission to determine whether a different process will still result in the exclusion of the resulting product. There is, however, an ambiguity in the Commission's rules which leaves it unclear whether a prospective importer who was not a respondent in the Commission investigation could seek such an advisory opinion. The Sausage Casings language was merely intended to clarify that a prospective importer who was not a respondent in the Commission investigation could seek an advisory opinion of the Commission. Its purpose was never to shift from the Customs Service to the Commission the responsibility for enforcing exclusion orders or determining whether particular shipments of a product fall within the scope of an exclusion order.

Vice Chairman Liebeler does not join in this footnote.

<sup>15/</sup> The copyrighted designs which are the subject of this investigation consist of nineteen depictions of various motifs. Since it is the design which is copyrighted, the colors of the imported merchandise are not at issue. On some of the imported merchandise, the design is reversed. The ALJ found that such articles nevertheless infringe the copyrighted designs.

commingling of infringing and noninfringing imports. The fact that Customs may have to inspect large numbers of shipments from manufacturers other than named respondents is not a reason, without more, to refrain from issuing a general exclusion order if that is the appropriate remedy.

## 2. Cease and desist orders

Complainant has requested that the Commission also issue cease and desist orders to all respondents, arguing that such orders are necessary to prevent manufacturers, importers, and retailers from continuing to manufacture or sell from inventory. However, complainant has not cited any record evidence which would indicate that there are large inventories of infringing jewelry remaining in the United States. In the absence of such evidence, we conclude that cease and desist orders are not warranted, and that a general exclusion order is the most appropriate form of relief in this investigation. <sup>16/</sup> <sup>17/</sup>

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<sup>16/</sup> See Certain Heavy-Duty Staple Gun Tackers, Inv. No. 337-TA-137, USITC Pub. No. 1506 at 5 (1984).

<sup>17/</sup> Chairwoman Stern notes that the Commission has issued both a general exclusion order and cease and desist orders against domestic respondents in the same case where there is evidence of significant inventories and the Commission has determined that such a remedy is otherwise appropriate. See e.g., Certain Molded-In Sandwich Panel Inserts and Methods for Their Installation, Inv. No. 337-TA-99, USITC Pub. No. 1246 (1982)(general exclusion order and cease and desist orders were directed at different unfair acts). Although other current Commissioners have not taken a position on the issue of whether issuance of both an exclusion order and a cease and desist order is appropriate in cases such as this which involve a single unfair act, Chairwoman Stern notes that she has found it appropriate. See Views of George M. Moore and Paula Stern in In the Matter of Doxycycline, Inv. No. 337-TA-3 (1979), USITC Pub. No. 964 at 22. Vice Chairman Liebeler reserves judgment on this issue of whether both orders can be issued for a single unfair act. She joins with Chairwoman Stern in observing that in this investigation, the reason there is no evidence on the record regarding inventory levels of any of the respondents is because the respondents did not formally participate in the investigation or respond to  
(footnote continued on next page)

### The Public Interest

The Commission may issue an exclusion order only after "considering the effect of such [an order] upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers." <sup>18/</sup> We conclude that an exclusion order will not have an adverse effect on these public interest factors.

Cloisonne jewelry is not an essential item for the preservation of the public health and welfare, and the exclusion of infringing jewelry is not likely to have any effect on competitive conditions in the United States. There are numerous manufacturers of costume jewelry which compete to a greater or lesser extent with complainant. Complainant has ample capacity to meet the domestic demand and distribute its jewelry throughout the United States.

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<sup>17/</sup> (footnote continued from previous page)  
complainant's discovery requests. This catch-22 situation is unfair to complainants. Under the circumstances, the Commission should consider the appropriateness of drawing adverse inferences against respondents on this specific factual issue. However, there is no evidence in the record as to whether or not complainant posed interrogatories regarding the specific issue of inventories to any of the subject respondents. In the future, we would hope that Initial Determinations will be clearer in this regard.

Remanding the investigation for development of the record on this specific factual issue appears to be the fairest way to resolve this problem, and is a course we would consider if the problem arises in future cases. Nevertheless, as a practical matter, it appears very unlikely that the complainant in this investigation would have been able to demonstrate that issuance of cease and desist orders are necessary or appropriate in this case. Two of the seven remaining domestic respondents are importers who, since September, 1984, have been subject to a consent decree prohibiting sales of certain of the subject infringing articles. See Exhibit D to Complainant's Motion for Summary Determination. In addition, the remaining domestic respondents appear to be primarily small retailers.

<sup>18/</sup> 19 U.S.C § 1337(d).

## Bonding

Section 337(g) provides for the entry of infringing articles upon the payment of a bond during the 60-day Presidential review period. <sup>19/</sup> In determining the amount of the bond, the Commission generally establishes an amount sufficient to "offset any competitive advantage resulting from the unfair method of competition or unfair act enjoyed by persons benefiting from the importation." <sup>20/</sup>

We have determined that a bond of 900 percent should offset the price advantage enjoyed by respondents. This figure is derived from a comparison of the average price at which respondent National Quality Co., Ltd., a Taiwanese trading company sells cloisonne jewelry (approximately 80 cents per pair FOB Taiwan) with the average wholesale price charged by complainant (\$8.00 per pair). <sup>21/</sup>

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<sup>19/</sup> 19 U.S.C. § 1337(g)(3).

<sup>20/</sup> S. Rep. No. 93-1298, 93d Cong., 2d Sess. 198 (1974).

<sup>21/</sup> This figure, which is higher than that requested by complainant, was arrived at in response to a request by the Customs Service that the Commission establish bonding requirements as a percentage of entered value, which is equal to the price received by the foreign exporter, FOB the foreign port.

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

In the Matter of )  
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CERTAIN CLOISONNE JEWELRY )  
 )

ID rec'd	
Conf.	3-6-85
Public	3-12-85
COMMISSION (P)	3-13-85
Petition due	3-26-85
Resp to pet. due	
Gov't comments due	
Public comments due	
Investigation No.	337-TA-195
Comm. decision due	4-5-85

INITIAL DETERMINATION

John J. Mathias, Administrative Law Judge

Pursuant to the Notice of Investigation in this matter (49 Fed. Reg. 23461, June 6, 1984), this is the Administrative Law Judge's Initial Determination under Rule 210.53(c) of the Rules of Practice and Procedure of this Commission. (19 C.F.R. 210.53(c)).

The Administrative Law Judge hereby determines that there is a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337, hereafter Section 337), in the importation of certain cloisonne jewelry into the United States, or in its sale. The complaint herein alleges that such importation or sale constitutes unfair methods of competition and unfair acts by reason of (1) alleged infringement of U.S. Copyright Registration Nos. VA 108-466, VA 108-465, VA 107-361, VA 105-485, VA 116-449, VA 137-741, VA 137-743, VA 116-448, VA 137-749, VA 137-758, VA 116-451, VA 137-748, VA 137-747, VA 116-447, VA 137-757, VA 137-744, VA 137-755, VA 137-740, and VA 116-450; and (2) passing off. It is further alleged that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

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## PROCEDURAL HISTORY

On April 26, 1984, Laurel Burch, Inc., 410 Townsend St., Suite 231, San Francisco, California 94107, filed a complaint with the U.S. International Trade Commission pursuant to 19 U.S.C. § 1337 (Section 337). The complaint alleged unfair methods of competition and unfair acts in the importation of certain cloisonne jewelry into the United States, or in its sale, by reason of alleged: (1) infringement of U.S. Copyright Registration Nos. VA 108-466, VA 108-465, VA 107-361, VA 105-485, VA 116-449, VA 137-741, VA 137-743, VA 116-448, VA 137-749, VA 137-758, VA 116-451, VA 137-748, VA 137-747, VA 116-447, VA 137-757, VA 137-744, VA 137-755, VA 137-740, and VA 116-450; and (2) passing off. The effect or tendency of these unfair methods of competition and unfair acts was alleged to be to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The complainant requested that the Commission institute an investigation, and, after a full investigation, issue both a permanent exclusion order and permanent cease and desist orders.

Upon consideration of the complaint, the Commission ordered, on May 31, 1984, that an investigation be instituted pursuant to subsection (b) of Section 337 to determine whether there is a violation of subsection (a) of Section 337, as alleged in the complaint. The notice of institution of such investigation was published in the Federal Register on June 6, 1984 (49 Fed. Reg. 23461).

The following fourteen parties were named as respondents in the  
Notice of Investigation:

Chen Wei Handicrafts Co., Ltd.  
64 Sung Chiang Road  
Pan Chiao City  
Taipei, Taiwan

Ching Sheng Co., Ltd.  
10 Alley, 32 Lane  
245 Chung Ching Road  
Pan Chiao City  
Taipei, Taiwan

Chen Will Handicraft Co., Ltd.  
346 Yuan Shan Road  
Chung Ho City  
Taipei, Taiwan

National Quality Co., Ltd.  
9th Floor, No. 140  
Chien Kuo N. Road  
Taipei, Taiwan

Giocosso Products Co., Ltd.  
Miramar Mansion  
683-1 Min Tsu East Road  
Taipei, Taiwan

Humber Pacific  
Suite 201 367 Water Street  
Vancouver, British Columbia  
Canada

Perfect Pearl Company  
8121 Central Park Avenue  
Skokie, Illinois 60071

Perfect Pearl Company  
104 West 29th Street  
New York, New York 10001

Diamond Sales  
The Card Gallery  
P.O. Box 17-446  
West Hartford, Connecticut 06117

Daniel Vianale  
401 5th Avenue  
New York, New York 10016

Il Hwa  
401 5th Ave.  
New York, New York 10016

Mr. David Rasnick  
3203 Overland Avenue  
No. 7149  
Los Angeles, California 90034

Far Eastern Traders  
P.O. Box 3293  
New York, New York 10185

The Answer Ltd.  
London Square Mall  
Eau Claire, Wisconsin 54701

Deborah S. Strauss, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, was named as Commission investigative attorney, a party to this investigation.

By Order No. 1, issued June 7, 1984, then Chief Administrative Law Judge Donald K. Duvall designated John J. Mathias as Administrative Law Judge in this investigation. (49 Fed. Reg. 25319, June 20, 1984).

Although none of the above-named respondents formally entered an appearance in this investigation, certain letters were filed in response to the complaint. These responses were filed by respondents Daniel Vianale and Il Hwa, on June 22, 1984; David Rasnick on June 28, 1984; Humber Pacific on July 2, 1984; and Chen Wei Handicrafts Co. and Chen Will Handicraft Co. on July 5, 1984.

A preliminary conference was held on July 24, 1984, pursuant to notice issued July 9, 1984. Appearances were made on behalf of complainant and the Commission staff. No respondents appeared at this conference.

Order No. 4, issued August 23, 1984, was an initial determination granting a joint motion to terminate the investigation as to respondent The Answer on the basis of a settlement agreement. The Commission issued a notice of its Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement on September 20, 1984. (49 Fed. Reg. 37857, September 26, 1984).

Order No. 6, issued November 27, 1984, was an initial determination granting complainant's motion to terminate this investigation as to respondent Humber Pacific. On December 26, 1984, the Commission issued a notice of its Decision Not To Review Initial Determination Terminating a Respondent on the Basis of Complainant's Motion To Terminate. (50 Fed. Reg. 358, January 3, 1985).

Complainant filed a motion for summary determination as to all issues in this investigation on November 6, 1984. (Motion Docket No. 195-3). This motion was accompanied by a supporting memorandum and affidavits. Complainant asserts, on the strength of the documents of record, and pursuant to Rule 210.50 (19 C.F.R. 210.50) that there are no genuine issues of material fact, and that it is entitled to summary determination

as a matter of law. The Commission investigative attorney has filed a response in support of this motion. Although respondents Chen Wei Handicrafts Co., Chen Will Handicraft Co. and David Rasnick filed letters, apparently in response to this motion, there are no affidavits or other evidence on this record apart from that submitted by complainant.

Order No. 9, issued December 5, 1984, ordered the submission of briefs on certain issues in complainant's motion for summary determination, and set the matter for oral argument. Oral argument was held before Administrative Law Judge John J. Mathias on December 19, 1984. Appearances were made on behalf of complainant and the Commission staff. No appearance was made on behalf of any respondent.

Following the oral argument of December 19, 1984, complainant filed a Declaration of Eta Morris on December 20, 1984. A Second Supplemental Memorandum in Support of Complainant's Motion for Summary Determination was filed on January 15, 1985.

On January 17, 1985, complainant filed a motion for the imposition of sanctions against respondents Ching Sheng Co., Giocoso Products Co., National Quality Co., Perfect Pearl Co., Diamond Sales, Far Eastern Traders, Daniel Vianale, and Il Hwa. (Motion Docket No. 195-14). Complainant's motion is based on Order No. 8, issued November 30, 1984, which granted complainant's motions to compel discovery as to each of these respondents, and required responses to complainant's discovery

requests not later than December 20, 1984 for domestic respondents, and January 3, 1985 for foreign respondents. Complainant alleges that no responses have been received from any of the respondents named in Motion 195-14. This motion was accompanied by a motion to shorten response time. (Motion Docket No. 195-15). No responses to either of these motions are of record. As provided hereinafter, Motion 195-14 is granted in part. In view of the serious nature of complainant's request for sanctions, and the lack of formal participation by the respondents named in Motion 195-14, response time to this motion was not shortened, so as to provide these respondents full opportunity to respond. Accordingly, Motion 195-15 is denied.

The issues have been briefed, and complainant has submitted proposed findings of fact as to which there is no genuine issue. The matter is now ready for decision.

This initial determination is based on the entire record of this proceeding, including the complaint and exhibits attached thereto, all responses to the complaint and other materials filed by respondents, complainant's motion for summary determination, and all affidavits and exhibits in support thereof, all responses and memoranda filed in connection with this motion, the arguments presented in briefs and at the oral argument held in this matter, and all submissions filed after the oral argument.

The findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the affidavits and exhibits supporting the findings of fact. They do not necessarily represent complete summaries of the evidence supporting each finding.

The following abbreviations are used in this Initial Determination:

- Tr. - Official transcript of the oral argument held December 19, 1984, followed by reference to page cited;
- Ex. - Complainant's exhibits appended to motion for summary determination, usually followed by name of affiant and paragraph number referenced and reference to exhibits attached to affidavit;
- CM - Complainant's memorandum in support of motion for summary determination;
- SM - Commission staff's response to complainant's motion for summary determination;
- CSM - Complainant's supplemental memorandum in response to Order No. 9, usually followed by reference to supplemental declarations and exhibits appended thereto;
- SSM - Commission staff's memorandum in response to Order No. 9;
- CSSM - Complainant's second supplemental memorandum in support of motion for summary determination, usually followed by reference to supplemental declarations and exhibits appended thereto.

## FINDINGS OF FACT

### I. JURISDICTION

1. The Commission Secretary served the complaint and notice of investigation on each respondent in this investigation. The Commission's records indicate that the complaint and notice of investigation were actually received by respondents Perfect Pearl Co. in New York and Illinois, Daniel Vianale, Il Hwa, David Rasnick, Far Eastern Traders, Chen Wei Handicrafts Co., Ching Sheng Co., and National Quality Co. In addition, respondents Chen Wei Handicrafts Co. (Chen Wei), Chen Will Handicraft Co. (Chen Will), Daniel Vianale, manager of Il Hwa, and David Rasnick filed responses to the complaint. (ALJX 2; Letter of June 20, 1984 by Daniel Vianale; Letter of June 23, 1984 by David Rasnick; Letter of June 27, 1984 from Chu & Associates on behalf of Chen Wei and Chen Will).

2. The complaint and notice of investigation served on respondent Giocoso Products Co. Ltd. (Giocoso) were returned to the Commission on August 10, 1984. (ALJX 2).

### II. PARTIES

3. Complainant Laurel Burch, Inc. (LBI) is a corporation of the state of California, having its principal place of business at 410 Townsend St., San

Francisco, California. LBI manufactures and sells a wide range of jewelry, stationery and personal accessories, including the cloisonne jewelry at issue. (Complaint, ¶¶ 2-3; Ex. 1, Burch Aff., at ¶¶ 1-4, exhibit A).

4. Respondent Chen Wei Handicraft Co., Ltd. (Chen Wei) was incorporated in 1977 and has its principal place of business at 64 Shung Chiang Road, Pan Chiao City, Taipei, Taiwan. The president of Chen Wei is Yun-Tai Wu. Chen Wei manufactures cloisonne jewelry in Taiwan. At least some of the jewelry manufactured by Chen Wei has been sold to a Taiwanese trading company, Faratak International, Ltd. (Letter from Chu & Associates of June 27, 1984 (hereafter Chu Letter); Answers for Interrogatories and Admission of Facts by Chen Wei and Chen Will and Introduction, dated November 27, 1984, prepared by Mr. Yun-Tai Wu and Mr. Yun-Chen Wu, filed with the Commission by complainant December 20, 1984 (hereafter Chen Wei and Chen Will Answers, Admission of Facts and Introduction)).

5. Respondent Chen Will Handicraft Co., Ltd. (Chen Will) was incorporated in 1979, and has its principal place of business at 344, 346 Yuan San Road, Chung Ho City, Taipei Hsien, Taiwan. The president of Chen Will is Mr. Yun-Chun Wu, younger brother of Mr. Yun-Tai Wu. Chen Will manufactures cloisonne jewelry in Taiwan. At least some of the cloisonne jewelry manufactured by Chen Will has been sold to a Taiwanese trading company, Faratak International, Ltd. (Chu Letter; Chen Wei and Chen Will Answers and Admission of Facts).

6. Initially, Chen Wei was selected by Laurel Burch to manufacture cloisonne jewelry for LBI. This relationship was later terminated by LBI due to the unacceptable quality of the jewelry provided by Chen Wei. (Ex. 4, Hoffman Aff., ¶ 7; Chu Letter, at 4; Chen Wei and Chen Will Answers, at 3, Admission of Facts, and Introduction, at ¶¶ 5-8).

7. Respondent Ching Sheng Co., Ltd. (Ching Sheng) is a company located at 10 Alley 32 Lane 245, Chung Ching Road, Pan Chiao City, Taipei, Taiwan. Ching Sheng manufactures jewelry in Taiwan, including cloisonne earrings. (Ex. 3, Hoffman Aff., ¶ 3 and exhibit A, Ching Sheng Report).

8. Respondent Giocoso Products Co., Ltd. (Giocoso) is a company located at 7th Floor, 683-1 Min Tsu East Road, Taipei, Taiwan. Giocoso manufactures cloisonne jewelry, including cloisonne earrings, in Taiwan. (Ex. 3, Hoffman Aff., ¶ 3, and exhibit A, Giocoso Report).

9. Respondent National Quality Co., Ltd. (National Quality) is a trading company located at 9th Floor, No. 74, Chien Kuo N. Rd., Sec. 2, Taipei, Taiwan. National Quality is a trading company which exports toys, gifts, furniture and cloisonne accessories to the United States and England. (Ex. 3, Hoffman Aff., ¶ 10, and exhibit B, National Quality Report).

10. Respondent Perfect Pearl, Inc. is an import-export company and a corporation of the state of Illinois having its principal place of business at 8121 Central Park Ave., Skokie, Illinois. Perfect Pearl has offered for sale and sold cloisonne earrings in the United States. (CM, exhibits C, D).

11. Respondent Perfect Pearl Co., Inc. is a corporation of the state of New York, having a principal place of business at 104 West 29th Street, New York, New York. Perfect Pearl has offered for sale and sold cloisonne earrings in the United States. (CM, exhibit D).

12. Respondent Diamond Sales Co., Inc., located at the Card Gallery, P.O. Box 17-446, West Hartford Connecticut 06117, is a merchandiser which has several retail outlets located in and around Hartford. Diamond Sales sells cloisonne jewelry. (Complaint, ¶ 14(c); Ex. 9, Miller Aff., ¶ 5).

13. Respondent Far Eastern Traders, P.O. Box 3293, New York, New York 10185, is a company located in New York City which sells cloisonne jewelry. (Complaint, ¶ 14(f); Ex. 10, Hyung Tae Kim Aff.).

14. Respondent Daniel Vianale is the manager of respondent Il Hwa, which is a retail health food store located at 401 Fifth Avenue, New York, New York 10016. Mr. Vianale sells cloisonne jewelry at his store, Il Hwa. (Letter from Daniel Vianale, dated June 20, 1984; Ex. 8, Solie-Vilker Aff., ¶¶ 4-7).

15. Respondent David Rasnick is an individual who resides at 3203 Overland Ave., Apt. 7149, Los Angeles, California 90034. Mr. Rasnick purchased a number of cloisonne earrings at a swap meet in Sylmar, California in 1983. These earrings were purchased from an unknown individual who indicated that the earrings were imported from Taiwan. Mr. Rasnick offered to

sell these earrings to two stores in Hawaii, the Gift Horse, and Island Gang. (Letter of June 23, 1984 from David Rasnick; Letter of November 24, 1984 from David Rasnick; Responses to Admissions and complainant's First Set of Interrogatories by David Rasnick, dated December 8, 1984; Ex. 3, Hoffman Aff., ¶ 14, and exhibit C).

### III. PRODUCT IN ISSUE

16. Laurel Burch has been involved in the design and manufacture of high fashion costume jewelry for approximately fourteen years. Initially, she began to create designs as a hobby, some of which she used on jewelry that she made in her home. These designs proved to be very popular among her friends, so Ms. Burch's hobby rapidly became a business. Many of Ms. Burch's designs are highly stylized abstractions based upon personal interpretations of objects of nature, such as birds, plants and flowers. Ms. Burch's original designs have been influenced by her extensive travels in the Far East, where she visited many museums and art collections, particularly in the People's Republic of China, Singapore, Korea and Taiwan. (Ex. 1, Burch Aff., ¶¶ 2, 5-6).

17. During the time that Ms. Burch was in the People's Republic of China, Singapore, Korea and Taiwan, she studied the art styles of these cultures, as well as their jewelry, and cloisonne jewelry manufacturing processes. Ms. Burch has participated in every aspect of the manufacture of cloisonne in each of these countries. As a result of her studies and

experience, Ms. Burch determined that her artistic goals for expressing her designs in earrings could best be realized by making a suitable modification of the cloisonne process of the Taiwanese craftsmen. (Ex. 1, Burch Aff., ¶¶ 7-9).

18. Cloisonne jewelry is manufactured in commercial quantities essentially only in Korea, Japan, Taiwan and the People's Republic of China. A person knowledgeable about the cloisonne manufacturing process can easily tell the country of origin of a particular piece of cloisonne jewelry. (Ex. 1, Burch Aff., ¶ 10).

19. In developing the cloisonne earrings at issue in this investigation, Ms. Burch spent approximately three months in Taiwan working with local craftsmen. She instructed them in the technical modifications to their processes that would enable them to produce earrings having her designs, and which would meet her high quality standards. Laurel Burch's quality standards are much higher than the standards generally prevalent for commercial manufacture of cloisonne jewelry in Taiwan. Two Taiwanese companies were selected to produce cloisonne earrings of Laurel Burch's design. It was agreed that even the rejected products would be purchased so that the manufacturers would be willing to take on the stricter quality standards, and also to prevent rejects from entering the black market. (Ex. 1, Burch Aff., ¶¶ 11-12).

20. Each of the designs at issue in the present investigation was created by Ms. Burch after the formation of Laurel Burch, Inc. (LBI). LBI was formed in May 1979. Ms. Burch is President, Chief Executive Officer and

Chairman of the Board of LBI. The copyright on each of the designs at issue is registered with the Copyright Office of the United States in the name of Laurel Burch. The copyright registration forms indicate that the creation of each design was completed in 1980, and first publication occurred in the United States in May 1980. (Ex. 1, Burch Aff., ¶¶ 1, 4; Complaint, exhibit I).

21. The designs at issue are all licensed exclusively by Laurel Burch to LBI for use on its products. A written license agreement was concluded on April 1, 1984, and was recorded in the Copyright Office on August 3, 1984. (Ex. 1, Burch Aff., ¶ 4, and exhibit A).

22. There are nineteen copyrighted cloisonne earring designs at issue in this investigation which have the following titles and copyright registration numbers:

<u>Title</u>	<u>Registration Number</u>	<u>Effective Date of Registration</u>
Waterfall	VA 108-466	6/14/82
Autumn Crane	VA 108-465	6/14/82
Willow Fan	VA 107-361	6/28/82
Sumatra Fan	VA 105-485	6/28/82
Tomiko	VA 116-449	1/06/83
Nile Bird	VA 137-741	1/06/83
Water Lily	VA 137-743	1/06/83
Wild Iris	VA 116-448	1/06/83
Wind Flowers	VA 137-749	1/06/83
Swallow	VA 137-758	1/06/83
Plum Blossom	VA 116-451	1/06/83
Peony	VA 137-748	1/06/83
Mynah Bird	VA 137-747	1/06/83
Lotus	VA 116-447	1/06/83
Lily	VA 137-757	1/06/83
Kiyono	VA 137-744	1/06/83
Dove	VA 137-755	1/06/83
Commas	VA 137-740	1/06/83
Bamboo	VA 116-450	1/06/83

(Complaint, Ex. I).

23. All of the cloisonne earrings which bear the copyrighted designs at issue are engraved on the back of the earring with the copyright notice © and either the name Laurel Burch or, on smaller earrings, the initials L.B. The cards on which these earrings are mounted for purposes of sale are marked with the name Laurel Burch, Inc., and in some cases, also bear the copyright notice. (Ex. 3, Hoffman Aff., physical exhibit A; Ct. Ex. 1).

24. Cloisonne earrings having the designs at issue manufactured by LBI pursuant to its exclusive license with Laurel Burch are sold by LBI throughout the United States in a large number of small boutiques and in major merchandising outlets, such as Nordstrom's, Macy's, Woodward & Lothrop and Hecht's. These designs are also displayed at trade shows held at various times during the year throughout the United States, and at the LBI showroom in New York. (Ex. 4, Hoffman Aff., ¶¶ 3-4).

25. Complainant has obtained samples of unauthorized copies of cloisonne earrings which bear Laurel Burch's copyrighted designs through purchase from a variety of locations throughout the United States, including department and discount stores such as Pay Less Drugs, Pay 'n Save, J.C. Penny, K-Mart, and Fred Meyer, gift, novelty and jewelry shops, several of the domestic respondents, including Diamond Sales, Far Eastern Traders, Il Hwa, and Perfect Pearl, and street vendors. (Ex. 4, Hoffman Aff., ¶ 19 and physical exhibits A & B; Ex. 5, Zeroulias Aff., physical exhibit A; Ex. 7, Hartmann Aff., and physical exhibits A-G; Ex. 8, Solie-Vilker Aff.; Ex. 9, Miller Aff.; Ex. 10, Hyung Tae Kim Aff; and Morris Decl.).

26. Laurel Burch has examined the samples of the unauthorized copies of her earring designs that were obtained by LBI representatives throughout the United States, and can confirm that each of the samples was manufactured in Taiwan, and that each is a copy of a design for which Laurel Burch has obtained a copyright registration. (Ex. 1, Burch Aff., ¶¶ 13-14; see also Ex. 3, Hoffman Aff., ¶ 22; and Ex. 4, Hoffman ¶¶ 10-15).

27. Through investigations of the foreign respondents conducted on behalf of LBI in Taiwan, complainant has identified at least one manufacturing source for each of the copies of Laurel Burch's designs at issue in this investigation with the exception of the design entitled Commas. (Ex. 3, Hoffman Aff., exhibit A; Ex. 12, Harris Aff.; Ex. 13, Kao Aff.; Ex. 14, Lo Aff.; Ex. 15, Chao Aff.; Ex. 16, Chao Aff.; Ex. 17, Andy Chao Aff.; see also FF 43-47, infra. See also FF 38 infra).

28. There was some confusion at the oral argument held in this matter over the precise design of the copyright registration entitled Commas. At that time, it became evident that Laurel Burch has one design entitled Commas, which is Copyright Registration No. VA 137-740, and is the design at issue herein, and another design entitled Three Commas, which is not involved in this investigation. The record has several samples of both the authentic LBI and unauthorized copies of LBI's design for the Three Commas, even though this is not the design at issue. Thus, the correct embodiment of copyright Registration No. VA 137-740 is the physical exhibit identified as Ct. Ex. 1. (Tr. 11-14; CSM, Hoffman Second Supp. Decl.; Ex. 4, Hoffman Aff., physical exhibit A; Cx. Ex. 1).

#### IV. INFRINGEMENT OF COMPLAINANT'S COPYRIGHTS

29. All designs that are sold by LBI are designs that have been personally created by Laurel Burch. Although her designs may depict common themes or objects of nature, Ms. Burch's representations of these objects are the result of her own artistic expression, and are not taken from any other artists or sources. (CSM, Burch Supp. Decl., ¶¶ 3-5).

30. In 1979, Ms. Burch sent samples of her designs that had been produced in cloisonne in the People's Republic of China to Ms. Tracy Luu, Manager of Faratak International Ltd., to see whether her designs could be produced in Taiwan. Ms. Burch had met Ms. Luu during an earlier trip to Taiwan. Although Ms. Burch had initially worked extensively with cloisonne manufacturers in the People's Republic of China, she wanted to evaluate the possibility of having the cloisonne work performed in Taiwan. In late 1979, Ms. Burch sent some samples to Ms. Luu in Taiwan. Return correspondence from Ms. Luu in December 1979 and February 1980 demonstrates that Faratak began to produce moulds and counter samples upon receipt of Ms. Burch's designs. Correspondence from Ms. Burch to Ms. Luu indicates that Ms. Burch had additional designs to send, but was reluctant to do it until she knew for sure whether they could be produced in Taiwan. (CSM, Burch Supp. Decl., ¶¶ 6-9, and exhibits A & B).

31. Ms. Burch traveled to Taiwan in February and March of 1980 on behalf of LBI to meet with potential manufacturers introduced to her by Faratak personnel. Among the topics of discussion at this time was the importance of a high quality product and the necessity of preserving the proprietary status of these designs. (CSM, Burch Supp. Decl., ¶¶ 10-11, and exhibits B & C).

32. After Ms. Burch was satisfied that her designs could be satisfactorily produced in Taiwan, she went to Taipei and stayed from the end of March 1980 through the middle of May of that year. During her stay in Taiwan, Ms. Burch created a number of new designs, and completed work on a number of designs that had been started in the United States. She worked with the Taiwanese artisans to perfect the realization of her designs, and worked on her own designs to conceptualize the various images. She refined the images to make them suitable to the cloisonne form as well as to the skill and equipment available to her. Her hotel room was essentially turned into a studio, where she did much of her work, and which is where she created or completed virtually all of the designs at issue in this investigation. (CSM, Burch Supp. Decl., ¶¶ 12-14, and exhibits B & D; CSM, Lind Aff., ¶¶ 4-6, and exhibit A).

33. Respondents Chen Wei and Chen Will suggest that they were introduced to Laurel Burch in July 1980 through a trading company, Jan Yun. They were approached to manufacture cloisonne for LBI, through the trading companies acting for LBI, Faratak, Jan Yun and Pang Lin. In addition, Chen Will and Chen Wei were requested to agree not to sell these products to other

companies. They did not agree to this condition. The relationship between LBI and Chen Will was terminated in April 1981, apparently due to mutual dissatisfaction over the high percentage of rejected product. (Chen Wei and Chen Will Answers, Admission of Facts and Introduction).

34. The investigative reports by CTS and David Credit in Taiwan on behalf of LBI indicate that respondent Chen Wei has manufactured cloisonne earrings which copy all of Laurel Burch's designs at issue, except the Commas. The other Taiwanese respondents either manufacture, or sell for export, cloisonne earrings which copy some of the LBI designs, with the exception of the Commas design. (FF 44-48, infra).

35. The accused cloisonne earrings manufactured by respondents in Taiwan, which are shown on this record through either catalogues, or samples obtained by investigators, as well as by physical samples obtained in the United States through purchase from domestic respondents and other outlets, are virtually identical in design to the samples of LBI earrings on this record, as well as to the designs shown in Laurel Burch's copyright registrations. (Compare samples shown in Ex. 4, Hoffman Aff., physical exhibits A & B; see also Complaint, exhibit I; Ex. 3, Hoffman Aff., exhibit A; Ex. 5, Zeroulis Aff., physical exhibit A; Ex. 6, Hartmann Aff., physical exhibits A-G).

36. In their response to the complaint, respondents Chen Wei and Chen Will allege that their designs for cloisonne earrings were taken from a book of designs entitled Japanese Design Motifs. This book contains 4,260 illustrations of traditional Japanese heraldic crests. The book was initially

published in Japan in about 1913, and was published again in 1972 by Dover Publications. Chen Wei and Chen Will have identified the designs in this book which they claim to be the source for the designs appearing on their cloisonne earrings. (Chu Letter, Exhibit II; Chen Wei and Chen Will Answers, Exhibit 1).

37. A comparison of the designs which appear in this book of Japanese design motifs with the copyrighted designs of Laurel Burch indicates that each of Laurel Burch's designs, although depicting a similar object as that shown in the book, is significantly different from the Japanese designs. This comparison compels the conclusion that the book of Japanese Design Motifs was not the origin of Laurel Burch's designs. (Compare, Complaint, Exhibit I, with Chu Letter, Exhibit II. See also Ex. 4, Hoffman Aff., physical exhibit A).

38. A comparison of the cloisonne earrings manufactured by Chen Will and Chen Wei with the book of Japanese Design Motifs and with Laurel Burch's designs reveals that Chen Wei's and Chen Will's designs are essentially identical to Laurel Burch's designs, whereas they are significantly different from the Japanese design motifs. (Compare Ex. 12, Harris Aff., Chen Wei Report and Chen Will Report, with Complaint, Exhibit I, and Chu Letter, Exhibit II).

39. With respect to complainant's design for the Commas, Copyright Registration No. VA 137-740, complainant has been unable to obtain a counterfeit sample of this earring, either in the United States or in Taiwan. Nevertheless, there is some evidence that this design also has been copied and

exported to the United States. (CSSM, at 4, and exhibit A; and CM, exhibit D, Laurel Burch v. Perfect Pearl Co., Inc. of Illinois, and Perfect Pearl Co., Inc. of New York, Consent Judgment).

40. Cloisonne earrings of the copyrighted designs at issue are sold by LBI throughout the United States and Canada in numerous small boutiques as well as in a number of large department stores, such as Nordstroms, Macy's Woodward & Lothrop and Hecht's. These designs are also displayed at trade shows held throughout the United States, and at the LBI showroom on Fifth Avenue in New York. In addition, LBI publishes a catalogue which shows color reproductions of the cloisonne earrings at issue, as well as other LBI products. (Ex. 4, Hoffman Aff., ¶¶ 3, 4; Ex. 1, Burch Aff., exhibit A, 1983-1984 LBI catalog).

41. The investigative reports prepared by CTS and David Credit on behalf of LBI clearly suggest that at least Chen Wei, Chen Will and National Quality were fully aware that some of their cloisonne earring designs were registered in the United States by an American company. Mr. Wu of Chen Will pointed out, however, that the legal ramifications of producing and exporting a copyrighted design without authorization could be minimized or avoided by mixing the copyrighted designs with other noninfringing jewelry, and sending such shipments to ports known for lax customs inspections, such as Hawaii. (Ex. 12, Harris Aff., Chen Wei Report, Chen Will Report; Ex. 14, Lo Aff., National Quality Report. See especially, Chen Will Report, at 1-2, ¶ 5).

42. On the basis of the foregoing Findings, I determine that the designs at issue herein are all original designs originally created and first published in the United States by Laurel Burch; that these designs have been duly registered in the Copyright Office of the United States by Laurel Burch and exclusively licensed to LBI; that notice of Laurel Burch's copyright is properly affixed to each item of jewelry and/or to the mounting card on which it is sold; that respondents and others have easy access to these copyrighted designs, both in the United States and Taiwan; that the cloisonne earrings manufactured by respondents are slavish copies of each of the designs registered by Laurel Burch; and that each of the respondents named herein has engaged either in manufacture, exportation to the United States, importation into the United States or sale in the United States of cloisonne earrings which infringe complainant's copyright. (FF 16-41, 43-53). Therefore, each of the named respondents has engaged in the unfair act of copyright infringement.

#### V. IMPORTATION AND SALE

43. Respondent Chen Wei manufactures cloisonne jewelry in Taiwan and sells the jewelry to Taiwanese trading companies, such as Taiwan Pang Lin, Faratak International, Ltd. and Jan Yun Co. pursuant to orders received from these companies. In 1980, Chen Wei manufactured cloisonne earrings for Laurel Burch. This relationship was terminated in 1981, due to LBI's dissatisfaction

with the quality of jewelry manufactured by Chen Wei. In addition, Chen Wei found it was losing money, due to the high rate of rejection. (Chu Letter; Chen Wei and Chen Will Answers and Admission of Facts; Ex. 4, Hoffman Aff., ¶ 7).

44. In September 1983, Commercial Trademark Services in Taiwan (CTS) conducted an investigation of Chen Wei on behalf of LBI. The investigator spoke with Mr. Wu Yun Tai of Chen Wei, who indicated that Chen Wei specializes in the manufacture of cloisonne jewelry, primarily for export to the United States and Europe. Mr. Wu indicated that he has continued to manufacture cloisonne earrings of LBI design, and that his monthly sales amount to approximately NT \$2,800,000. The investigator visited Chen Wei's production facility and obtained samples of earrings that were being manufactured. Included in these samples were each of the LBI designs listed in FF 22, supra, with the exception of the Commas design. (Ex. 12, Harris Aff., Chen Wei Report).

45. Respondent Chen Will is operated by the younger brother of Mr. Wu Yun Tai, the president of Chen Wei. The submissions filed jointly by Chen Will and Chen Wei suggest that these businesses are operated in substantially the same manner. In addition, CTS conducted an investigation of Chen Will on behalf of LBI in October 1983. The investigator spoke with Mr. Wu Yun Chun, president of Chen Will. Mr. Y.C. Wu indicated that Chen Will specializes in the manufacture of cloisonne jewelry, which is exported to the United States and supplied to the local market and local trading companies. At this meeting, the investigator saw samples of Chen Will's cloisonne earrings, and

purchased several samples, which included Laurel Burch's designs for the Nile Bird, Lily, Autumn Crane, Swallow, Bamboo, Mynah Bird, Willow Fan, Doves, Plum Blossom and Wild Iris. These designs were priced at NT \$28 per piece FOB Taiwan. At the time of the investigation, Mr. Wu indicated that he had approximately 300 pieces in stock, and that more were possibly available, as he had a number of defective cloisonnes of a darker tint in storage. (FF 43, supra; Ex. 12, Harris Aff., Chen Will Report; Ex. 15, Chao Aff.).

46. CTS conducted an investigation of respondent Ching Sheng on behalf of LBI in October 1983. The investigator spoke with a Ms. Hou Li Hong, and obtained leaflets of cloisonne jewelry manufactured by Ching Sheng. Ching Sheng manufactures cloisonne jewelry for sale to local trading companies and for export world wide. The investigator saw several sample of cloisonne earrings which included Laurel Burch's designs of the Lily, Autumn Crane, Nile Bird, Willow Fan and Plum Blossom. Ching Sheng customarily manufactures jewelry for outstanding orders, and does not maintain an inventory. (Ex. 12, Harris Aff., Ching Sheng Report; Ex. 16, Chao Aff.).

47. CTS conducted an investigation of respondent Giocosco on behalf of LBI in October 1983. The investigator spoke with Ms. Joy Huang, and obtained a leaflet of the products offered by Giocosco. Ms. Huang indicated that Giocosco specializes in the export of cloisonne jewelry to the United States. The cloisonne is manufactured for Giocosco by another, undisclosed factory in Taiwan. The investigator observed in Giocosco's brochure a cloisonne earring of similar design to Laurel Burch's Wild Iris. Ms. Huang indicated that Giocosco can provide any design of cloisonne jewelry according to a buyer's specifications. (Ex. 12, Harris Aff., Giocosco Report; Ex. 17, Andy Chao Aff.).

48. In March 1984, David Credit Information & Trademark Service Co., Ltd. in Taiwan (David Credit) conducted an investigation of respondent National Quality on behalf of LBI. The investigator spoke with the Section Chief of National Quality, Mr. Morio Chen, and obtained a catalogue and price lists. Mr. Chen indicated that National Quality is a trading company which exports products, including cloisonne jewelry, to the United States and England. National Quality's catalogue includes cloisonne earrings of design identical to Laurel Burch's Wild Iris, Lily, Mynah Bird, Sumatra Fan, and Waterfall. The January 1984 price list indicates that National Quality sells cloisonne earrings at prices ranging from U.S. \$.42 - 1.15 FOB Taiwan. (Ex. 13, Kao Aff., National Quality Report; Ex. 3, Hoffman Aff., ¶¶ 10-13; Ex. 14, Lo Aff.).

49. Respondents Perfect Pearl in Illinois and Perfect Pearl in New York (referred to collectively herein as Perfect Pearl) have admitted to exhibiting, offering for sale and selling in the United States cloisonne earrings which are copies of Laurel Burch's designs for the Sumatra Fan, Waterfall, Lily, Commas, Mynah Bird, and Nile Bird. (CM, Ex. D, Consent Judgment between Laurel Burch and Perfect Pearl in U.S. District Court, N.D. Ill., September 1984; see also Ex. 4, Hoffman Aff., physical exhibit A; Ex. 5, Zeroulis Aff., physical exhibit A).

50. Respondent Diamond Sales has sold and offered for sale in the United States cloisonne earrings which copy Laurel Burch's designs for the Waterfall, Sumatra Fan, Nile Bird, Wild Iris, and Lily. (Ex. 9, Miller Aff.; Ex. 5, Zeroulis Aff., physical exhibit A).

51. Respondent Far Eastern Traders has offered for sale and sold in the United States cloisonne earrings which copy Laurel Burch's designs for the Waterfall, Autumn Crane, Nile Bird, Wild Iris, Swallow, Plum Blossom, Mynah Bird, Lotus, and Lily. (Ex. 10, Hyung Tae Kim Aff.; Ex. 5, Zeroulias Aff., physical exhibit A).

52. Respondents Daniel Vianale and Il Hwa have offered for sale and sold in the United States cloisonne earrings which copy Laurel Burch's designs for the Autumn Crane, Nile Bird, Swallow, Plum Blossom and Lily. (Ex. 8, Solie-Vilker Aff.; Ex. 5, Zeroulias Aff., physical exhibit A).

53. Respondent David Rasnick sold approximately 300 pair of cloisonne earrings in the United States, some of which were sold in Hawaii to two stores, the Island Gang, and the Gift Horse. Among the earrings sold by Mr. Rasnick were copies of Laurel Burch's designs for the Waterfall, Plum Blossom, Willow Fan, Lily, Autumn Crane, Mynah Bird, Nile Bird, Swallow, Wild Iris, Lotus, and Sumatra Fan. (Letter of David Rasnick, dated November 24, 1984; Ex. 3, Hoffman Affidavit, exhibit C; Ex. 5, Zeroulias Aff., physical exhibit A).

## VI. DOMESTIC INDUSTRY

54. The cloisonne components of LBI earring designs are manufactured in Taiwan for LBI under contract with Taiwanese companies. Once the cloisonne components arrive in the United States at LBI's facility in San Francisco, additional production work is performed by LBI to transform them into earrings. ( Ex. 6, Drissell Aff., ¶¶ 3-4).

55. The production, testing, and packaging of cloisonne earrings take place at LBI's facility in San Francisco, California. (Ex. 2, Burch, Aff., ¶ 4).

56. Cloisonne components purchased from Taiwanese manufacturers are inspected when received at the San Francisco facility to insure compliance with overall aesthetic standards of Laurel Burch, Inc. and specifically to determine compliance with applicable specifications for that design relating to color, size and design replication. Pairs of these design components are then matched by hand. This involves matching for color, image and size to accommodate the minute variations, even within a single design, resulting from the fact that a portion of the process in Taiwan is done by hand. Post studs are then mounted and stress tested to assure not only the proper quality of the material, but also the strength of adhesion between the stud and the design component. Earwires are formed to fit the shape of each different design so as to achieve the necessary durability and also to comply with aesthetic requirements. These earwires are then attached to the earrings and the shape of the hooks on the earwire is adjusted. In the case of earrings

for nonpierced ears, a clutch mechanism must be attached to the post and tested to assure that the proper locking and release action is provided. Following this, the post and the drop portion of the earrings are both attached to a mounting card. This mounting protects the earring assembly from damage associated with an earring contacting its mate and also presents the pair of earrings separately and symmetrically for sales display purposes. Labels are then prepared and attached and the entire assembly enclosed in a plastic bag for protection. ( Ex. 6, Drissell, Aff., ¶ 4).

57. LBI's domestic quality control activities are the primary quality control performed on domestically produced components and finished cloisonne earrings. At the present time, and during almost all of the period from April through November of 1984, LBI's U.S. quality control activities were the only thorough effort to inspect the quality of Taiwanese design components. The Taiwanese cloisonne manufacturers are requested to perform some quality inspection, but their efforts cannot be relied upon because of wide variances in quality practices between manufacturers. LBI's small Taiwan office did inspect all components for a brief time during 1984. However, this policy has been discontinued, and at present all LBI quality control activities are performed in the United States. (CSSM, Hoffman, Supp. Aff., ¶ 3).

58. LBI's domestic quality control activities are extensive. Every single incoming unit is inspected as many as three separate times for a number of possible defects, including discoloration, enamel flaws and cracks, and post placement. In addition, components are matched for color and finished pieces are stress tested. At least four LBI employees are engaged in quality control at any one time. (CSSM, Hoffman Supp. Aff., ¶ 3).

59. LBI expends significant funds on domestic quality control. At least of the company's total Assembly and Quality Control labor expenses are attributable to the quality control process, which cost approximately for the eight-month period from April to November of 1984. (CSSM, Hoffman Supp. Aff., ¶ 5).

60. LBI's domestic quality control is necessary to ensure that the company's final product is of the highest possible quality. An average of 4 to 5 percent of all imported components are rejected because of defects, and this rejection rate is as high as 30 to 40 percent for some designs. (CSSM, Hoffman Supp. Aff., ¶ 6).

61. Mr. G. Keith Drissell, a certified public accountant, is the controller of LBI and is responsible for the financial affairs of the company. (Ex. 6, Drissell Aff., ¶¶ 1 - 2). Mr. Drissell prepared a report summarizing the value added to the imported cloisonne components by LBI's domestic activities. (Ex. 6, Drissell Aff., ¶ 7). At the oral argument, the Administrative Law Judge requested a more detailed report of the domestic value added, which was submitted pursuant to the judge's order. This report provides a detailed analysis of the cost breakdown of the production, quality control, and other activities performed by LBI in the United States, as compared to the cost of the work performed in Taiwan. Mr. Drissell has calculated that the value added by LBI's domestic activities exceeds 50% of the total value of the finished earrings. (CSSM, Drissell Supp. Decl., and Attachment A).

62. On the basis of the facts of record, I find that LBI's activities in the United States in connection with the cloisonne earrings at issue are of a nature and significance sufficient to constitute a domestic industry. Such industry consists of the domestic facilities of LBI devoted to production, quality control, packaging, marketing, distribution and sale of cloisonne earrings which utilize the copyrighted designs at issue. (FF 54-61).

#### VII. EFFICIENT AND ECONOMIC OPERATION

63. LBI was founded in 1979, and is the exclusive licensee of the copyrighted designs of Laurel Burch. Since 1979, these designs have gained widespread acceptance. Revenue from sales for the fiscal year ending March 31, 1984 was approximately \$4.5 million, which is roughly twice the sales revenue for fiscal year 1983. Present sales of LBI on an annualized basis are about \$8.5 million. (Ex. 2, Burch Aff., ¶ 3, and exhibit A, 1983-1984 Financial Statement).

64. LBI has recently entered into a new lease at its facility in San Francisco which more than doubles the number of square feet leased at that location. LBI's leased space in San Francisco is now approximately 24,000 square feet. In addition, LBI is currently negotiating with its lessor in New York city to acquire additional space and facilities for its gallery/show-room. This will require an investment of approximately \$150,000. (Ex. 2, Burch Aff., ¶ 4).

65. LBI has recently entered into a five-year lease-purchase agreement for a Burroughs computer system with specialized software. The cost of this system is approximately \$320,000. When this system becomes operational, it will handle accounts receivable, accounts payable, inventory control and customer orders. (Ex. 2, Burch Aff., ¶ 5).

66. When LBI was incorporated, it had three employees. Currently, it has seventy-nine employees, in addition to sales representatives throughout the country. In order to attract and retain high quality personnel, LBI has adopted a pension plan and a discretionary profit sharing plan. (Ex. 2, Burch Aff., ¶¶ 6, 7, and exhibits B & C).

67. One of the principal objectives of LBI is to market a distinctive, high quality product which will create a reputation for products not only having original and striking designs, but also which comprise the highest quality of materials and craftsmanship. This objective is achieved, at least in part, through a rigorous quality control program. Each of LBI's production factories in Taiwan has agreed to inspect every cloisonne piece before delivering them to LBI's Taiwan office in order to ensure compliance with LBI's quality standards. However, due to the wide variation in quality practices between manufactures, this is only a preliminary quality check. For a time during 1984, LBI's Taiwan office performed another quality check before sending the shipment to LBI in the United States. This practice has since been discontinued, and now the primary quality control activity occurs in the United States. (Ex. 2, Burch Aff., ¶¶ 8, 9; CSSM, Hoffman Supp. Decl. ¶ 3).

68. The quality control performed by LBI in the United States is quite extensive. After final production of each earring in the United States, every piece is inspected as many as three times for several possible defects, including discoloration, enamel flaws and cracks, and post placement. In addition, the components are matched for color and then stress tested. As a result of these quality control procedures, an average of 4-5% of all cloisonne components are rejected due to defects, although the rejection rate may be as high as 30-40% for some designs. (Ex. 2, Burch Aff., ¶ 9; CSSM, Hoffman Supp. Decl., ¶¶ 4-6).

69. LBI has engaged in an extensive advertising and promotional effort throughout the United States to identify its designs with the company. During the past fiscal year, approximately \$150,000 was directed to advertising and promotion of LBI's designs. (EX. 2, Burch Aff., ¶ 11).

70. LBI's production and sales figures for cloisonne earrings bearing the designs at issue indicate that from 1981-1983 the volume of both production and sales increased significantly each year over the previous years. (Complaint, Conf. Ex. IV-2).

71. Based on the foregoing facts, I find that the relevant domestic industry is efficiently and economically operated. (FF 63-70).

## VIII. INJURY

72. Respondent Diamond Sales Co. is a retail sales company which has a number of outlets located in and around Hartford, Connecticut. Diamond Sales was a customer of LBI for the cloisonne earring designs at issue. In 1981, LBI sold more than \$500 worth of product to Diamond Sales; in 1982, the level of sales increased to more than \$8,000. In 1983, Diamond Sales began to purchase copies of LBI cloisonne jewelry. Its purchases from LBI declined in 1983 to approximately \$3,400. In 1984, Diamond Sales ceased purchasing cloisonne jewelry from LBI altogether. However, it continues to sell copies of LBI's jewelry designs. Diamond Sales sells these jewelry copies at a price of \$6.50 per pair. The retail price of the same earring design from LBI is \$16.00 per pair. The material and workmanship of the copies sold by Diamond Sales is far inferior to the quality of LBI jewelry. (Ex. 4, Hoffman Aff., ¶ 20; Ex. 9, Miller Aff.).

73. LBI has identified at least thirty other retail outlets which formerly purchased Laurel Burch cloisonne earrings from LBI, and which have since sold copies of these earrings. In half of these cases, purchases of authentic LBI jewelry were discontinued by these retail outlets. The reason often given to LBI by these lost customers is the abundant availability of cheap copies. (Ex. 4, Hoffman Aff., ¶ 21; Ex. 2, Burch Aff., ¶ 13).

74. LBI has purchased samples of unauthorized copies of LBI cloisonne earrings at retail outlets throughout the United States. These copies are generally sold at retail for about \$5-10. The comparable authentic LBI earrings are sold at retail for between \$16-19. (Ex. 4, Hoffman Aff., ¶¶ 12-16, and physical exhibits A & B).

75. LBI has sent more than 150 letters to sellers of the copies of its jewelry designs demanding that they cease and desist from selling infringing copies when it has good and sufficient reason to believe that an outlet has sold such copies. These letters are not sent unless LBI has purchased samples of the copies, or obtained catalogues which display these copies for sale, and in some instances, where informal contact by an LBI representative has been ineffective. These cease and desist letters have been sent to retail outlets in nineteen states, as well as to entities located in Australia and Canada, and to manufacturers in Taiwan. In particular, LBI has sent cease and desist letters to the Boston Stores, Cost Plus, GEMCO, K-Mart, Mervyns, Pay-Less, Pay 'n Save and J.C. Penny. (Ex. 2, Burch Aff., ¶ 14; Ex. 4, Hoffman Aff., ¶¶ 15, 18, 19).

76. On occasion, when some retail outlets appeared to have sold these copies of LBI earrings for the first time and apparently innocently, LBI has agreed to reimburse the retailer for the amount it claimed to have paid the wholesaler for the copies. The price has typically been approximately \$1.50 - 2.50 per pair. By contrast, LBI's prices to its wholesalers range from \$6.50-9.50. (Ex. 4, Hoffman Aff., ¶ 17; Complaint, Conf. Ex IV-2).

77. A west coast retail outlet, Cost Plus, placed an advertisement in the newspaper which featured copies of LBI earrings at an advertised price of \$3.88. When LBI discovered this advertisement, it contacted Cost Plus, which agreed to withdraw the product and destroy it. (Ex. 2, Burch Aff., ¶ 15; Ex. 4, Hoffman Aff., ¶ 19, and exhibit C).

78. LBI has experienced a number of instances in which an order placed for LBI cloisonne earrings was subsequently cancelled. Two such instances were by small retail outlets, Gulf Stores Kite Co. in Alabama and the Super Loot Co. in Illinois. When questioned about the reason for cancellation, the reason frequently given has been the availability of the cheap copies of LBI designs. (Ex. 5, Zeroulis Aff., ¶¶ 7-8).

79. LBI has also encountered situations in which a customer will return a defective copy of an LBI cloisonne earring to an LBI sales outlet. On one such occasion, a customer returned a pair of mismatched earrings to an LBI retail outlet. The sales person issued a credit to the customer without realizing that the pair of earrings was not from LBI, but rather was a copy. (Ex. 5, Zeroulis Aff., ¶ 6, and exhibit B).

80. There are two interrelated reasons why LBI has been experiencing cancellation of orders. First, the availability of cheap copies of LBI designs discourages the normal, fashion conscious LBI customer from purchasing a product that is commonly duplicated at a fraction of the price of the authentic product. Second, in order to sell to less discriminating

purchasers, who are price, rather than quality conscious, LBI's former customers feel compelled to purchase the lower priced copies. (Ex. 5, Zeroulias Aff., ¶ 9; Ex. 2, Burch Aff., ¶¶ 12-13).

81. Another common sales outlet for copies of LBI earrings are street vendors. In Washington, D.C. alone, LBI has located street vendors selling cloisonne earrings which copy LBI designs in places ranging from Georgetown and Dupont Circle, to downtown and on the mall outside the International Trade Commission, at 7th and E Sts., N.W. The prices charged by these street vendors are typically \$3-5 per pair or two pairs for \$5-8. (Ex. 7, Hartmann Aff., and physical exhibits A-G).

82. Comparison of the cloisonne earrings sold by Laurel Burch, with the copies of the same designs sold by the domestic respondents and others, reveals that, although the designs have been copied in detail, the quality of the materials and workmanship of the unauthorized copies is visibly inferior to the authentic LBI earrings, and there appears to be little effort made to match or otherwise control the quality of these copies. (Ex. 3, Hoffman Aff., physical exhibits A & B; Ex. 5, Zeroulias Aff., physical exhibit A; Ex. 7, Hartmann Aff., physical exhibits A-G; Ex. 2, Burch Aff., ¶ 10).

83. Cloisonne manufacturing in Taiwan is situated in and around Taipei, and consists of around 100-150 "cottage industry" type of operations typically having between 15-20 employees. When LBI representatives were in Taiwan to select companies to do their cloisonne work, they found this manufacturing community to be very close knit. (Ex. 4, Hoffman Aff., ¶ 8).

84. There are currently four companies in Taiwan which do cloisonne work for LBI, namely, Her Jang Co. Ltd., Universal Medal Art Co., Ltd., Yuh Hwa, and Jong Shinn Cloisonne Co., Ltd. (Ex. 4, Hoffman Aff., ¶ 9).

85. Respondent Chen Wei manufactured cloisonne pieces for LBI in 1980 and 1981, and at that time had access to a number of LBI designs and also had the moulds for production. The information obtained by CTS for LBI as a result of its investigation suggests that Chen Wei still retains these moulds. In addition Chen Wei admits that it still possesses all of these moulds. (Ex. 4, Hoffman Aff., ¶ 7; Ex. 12, Harris Aff., Chen Wei Report; Chen Wei and Chen Will Admission of Facts, ¶ 6).

86. The investigations conducted by CTS for LBI indicate that Chen Will and Ching Sheng also have moulds of LBI designs. Furthermore, several of the manufacturing respondents indicated that if they do not already have a mould, all they need is a sample of the design to be able to manufacture cloisonne to a buyer's specifications. (Ex. 12, Harris Aff., Chen Will Report, ¶ 8; Ching Sheng Report, ¶¶ 3, 5; Giocoso Report, ¶¶ 5, 6; Chen Wei Report, ¶ 7).

87. A Taiwanese manufacturer familiar with the cloisonne process would be able to take a design drawing and produce a copy of that design in cloisonne on an earring or other ornament in less than two weeks. A manufacturer in Taiwan who was not concerned about quality or materials could achieve production of about 3,200 pieces per day, and could reach that level of production in about 30 days. (Ex. 11, Blackwell Aff., ¶ 5).



## OPINION

### I. INTRODUCTION

This investigation is concerned with the importation into the United States from Taiwan of certain cloisonne earrings, which are claimed by complainant to be unauthorized copies of designs originally created by Laurel Burch, for which Laurel Burch has obtained U.S. copyright registrations. As required by Section 337, complainant alleges that these acts of copyright infringement constitute unfair acts and unfair methods of competition which have the effect or tendency to destroy an industry, efficiently and economically operated, in the United States.

The participation of respondents in this investigation can best be characterized as informal and sporadic. Although several respondents filed letters in response to the complaint, and some provided a limited amount of discovery, no respondent formally entered an appearance in this case, and the majority provided no discovery at all. The respondents fall into three categories. Several of the foreign respondents are engaged in manufacture in Taiwan of the accused cloisonne earrings. One foreign respondent and two domestic respondents export and import, respectively, the accused product. The remaining domestic respondents sell or have sold the accused cloisonne earrings in the United States. (FF 4-15).

In lieu of a full hearing on this matter, complainant submitted a motion for summary determination pursuant to 19 C.F.R. 210.50 on all issues presented in this investigation. This motion was supported by affidavits and other exhibits, and upon the order for oral argument, was supplemented by additional affidavits and other evidence. No opposing affidavits or evidence have been submitted by any other party. The Commission investigative attorney fully supports complainant's motion for summary determination, and agrees with complainant's assertion that there are no genuine issues of material fact, and that complainant is entitled to a determination in its favor as a matter of law.

## II. JURISDICTION

Section 337 confers subject matter jurisdiction on the International Trade Commission to investigate, and if appropriate, to provide a remedy for, unfair acts and unfair methods of competition in the importation of articles into the United States, or in their sale by the owner, importer, consignee or agent of either, which have the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. 19 U.S.C. § 1337. See Certain Steel Rod Treating Apparatus and Components Thereof, Inv. No. 337-TA-97, Commission Memorandum Opinion, 215 U.S.P.Q. 229, 231 (1981) (Steel Rod). In order to have the power to decide a case, a court or agency must have both subject matter jurisdiction, and jurisdiction over either the parties or the property involved. Id.

The power of the Commission to issue a remedy in a Section 337 investigation is based on its in rem jurisdiction over the property involved. Thus, the remedy operates against property, not against parties. Sealed Air Corp. v. U.S. International Trade Commission, 209 U.S.P.Q. 469 (C.C.P.A. 1981). As a result, it is not necessary for the Commission to have in personam jurisdiction over a party to name them as a respondent or to adversely affect their interest in the property under dispute. Steel Rod, 215 U.S.P.Q. at 232; see also In re Orion, 21 U.S.P.Q. 563, 571 (C.C.P.A. 1934).

Although the Commission may act on the strength of its in rem jurisdiction in the absence of in personam jurisdiction, due process requires that it provide notice to persons with an interest in property reasonably calculated to inform them of the pendency of an action affecting that property so that they may have the opportunity to appear and defend their interests. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). Thus, service of the complaint and notice of investigation by the Commission on a named foreign respondent may not necessarily be an assertion of personal jurisdiction over that party, but will satisfy the due process requirement of reasonable notice to support in rem jurisdiction. Steel Rod, 215 U.S.P.Q. at 231.

In this investigation, the Commission Secretary served the complaint and notice of investigation on all respondents, and there is sufficient proof on this record to establish that all respondents except Giocosso and Diamond Sales actually received notice of this investigation. (FF 1, 2). With respect to

respondent Diamond Sales, although the Commission did not receive a return receipt or a written response to the complaint, the complaint and notice that were served by mail were not returned to the Commission. (ALJX 2). In view of the fact that Diamond Sales is a domestic company, and that the notice of investigation was published in the Federal Register, I find that Diamond Sales, at a minimum, received constructive notice of this investigation.

On the basis of the facts of record, I find that the Commission has personal jurisdiction over all domestic respondents named in the investigation. (FF 1).

It has not been established that any of the foreign respondents directly engages in business in the United States, although their products are exported to the United States. Therefore, there is no basis for determining whether or not the Commission may have personal jurisdiction over any of these respondents. However, the in rem nature of this proceeding makes such an inquiry unnecessary. Steel Rod, 215 U.S.P.Q. 229.

The record indicates that all of the foreign respondents except Giocoso received actual notice of this investigation. (FF 1, 2). Thus, adequate notice has been provided to support the Commission's assertion of in rem jurisdiction in this matter.

For the foregoing reasons, I find that the Commission has jurisdiction

over the subject matter of this investigation, in rem jurisdiction over the product at issue, and personal jurisdiction over the domestic respondents named in this investigation.

### III. COMPLAINANT'S MOTION FOR SANCTIONS

On January 17, 1985, complainant filed a motion for the imposition of sanctions against respondents Ching Sheng, Giocosco, National Quality, Perfect Pearl of Illinois and New York, Diamond Sales, Far Eastern Traders, Daniel Vianale, and Il Hwa. (Motion Docket No. 195-14). There are no responses of record to this motion.

Complainant alleges that on October 6, 1984, it served its First Set of Interrogatories, First Request for Production of Documents and First Set of Requests for Admissions on each of the above named respondents. In the absence of any responses to these discovery requests, complainant filed motions to compel discovery from each of the respondents, which motions were granted by Order No. 8, issued November 30, 1984. Order No. 8 required responses from domestic respondents to complainant's discovery requests by December 20, 1984, and from foreign respondents by January 3, 1985. By the date of filing Motion 195-14, complainant had not received discovery responses from the above named respondents, and accordingly moved for the imposition of sanctions.

Complainant requests that each and every request for an admission propounded by LBI to each above named respondent be deemed admitted, and that it be inferred that each response to LBI's interrogatories and requests for production of documents would have been adverse to the above named respondents. For the reasons which follow, I find that although it is appropriate to impose sanctions, under the circumstances of this case, the sanctions requested are inappropriate.

Rule 210.36(b) provides that if a party fails to comply with an order compelling discovery,

the administrative law judge, for the purpose of permitting resolution of relevant issues and disposition of the investigation without unnecessary delay despite failure to comply, may take such action in regard thereto as is just ....

Since an investigation under Section 337 must be concluded within strict statutory time limits, even in the absence of cooperation from respondents, the Commission is empowered to impose procedural disabilities on nonparticipating respondents to allow timely completion of an investigation while observing the due process requirements mandated by the Administrative Procedure Act (APA). 5 U.S.C. § 551 et seq. See Sealed Air Corp. v. U.S. International Trade Commission, 209 U.S.P.Q. 469.

Irrespective of the imposition of sanctions, however, the complainant is not relieved of its burden of establishing a prima facie case on the issue of violation. The APA requires that an initial determination on the issue of violation of Section 337 pursuant to Rule 210.53 be based upon "reliable, probative, and substantive evidence." 5 U.S.C. § 556(d). Thus, the imposition of sanctions allows the administrative law judge to create procedural disabilities against the sanctioned party and to entertain, without opposition, proposed findings of fact and conclusions of law, which must be based on substantial, reliable and probative evidence in order to support an initial determination. See Certain Electric Slow Cookers, Inv. No. 337-TA-42, Commission Opinion in Support of Orders Terminating Certain Respondents, Declaring This Matter More Complicated and Remanding This Matter for Further Proceedings.

Complainant seeks to have certain facts admitted or to be taken as established adversely to these respondents. In view of the fact that these discovery requests do not appear to be a matter of record, it is not clear what issues would be affected by such sanctions. However, I find that complainant has submitted sufficient reliable, substantial and probative evidence, including secondary evidence, on every issue presented in this investigation, to meet its burden of making a prima facie case.

Accordingly, I find that the failure of the respondents named in Motion 195-14, with the exception of respondent Giocoso Products Co., to provide the

discovery ordered in Order No. 8, warrants the imposition of the following sanctions, pursuant to Rule 210.36(b):

- (1) Each respondent named in Motion 195-14, with the exception of Giocoso, may not introduce into evidence or otherwise rely upon testimony or documents or other material in support of its position; and
- (2) Each respondent named in Motion 195-14, with the exception of Giocoso, will not be heard to object to introduction and use of secondary evidence to show what the withheld admission, responses, documents or other evidence would have shown.

The foregoing sanctions will not be imposed on respondent Giocoso, due to my finding that there is no evidence that Giocoso received adequate notice of this investigation. (FF 2).

To the extent, and on the terms provided herein, Motion 195-14 is granted in part.

#### IV. COPYRIGHT INFRINGEMENT BY RESPONDENTS

The unfair acts or unfair methods of competition which respondents are alleged to have committed consist of infringement of complainant's copyright. Copyright infringement is an unfair act or method of competition under Section 337. Certain Personal Computers and Components Thereof, Inv. No. 337-TA-140, 224 U.S.P.Q. 270 (1984) (Personal Computers); Certain Coin-Operated Audiovisual Games and Components Thereof (Viz., Rally-X and Pac Man), Inv. No. 337-TA-105, 218 U.S.P.Q. 924 (1982) (Games II); Certain Coin-Operated Audiovisual Games and Components Thereof, Inv. No. 337-TA-87, 214 U.S.P.Q. 217, (1981) (Games II).

In order to support its claim of copyright infringement, complainant must demonstrate ownership of the copyright and copying by respondents. Games I, 214 U.S.P.Q. at 223, and cases cited therein.

##### A. Copyright Ownership by Complainant

A prima facie case of copyright ownership is established by proof of the following elements:

1. Originality in the author;
2. Copyrightability of the subject matter;
3. Citizenship status of the author such as to permit a claim of copyright;
4. Compliance with applicable statutory formalities; and

5. If complainant is not the author, a transfer of rights or other relationship between the author and complainant so as to constitute complainant the valid copyright claimant.

Id. at 223-24; Games II, 218 U.S.P.Q. at 928; 3 Nimmer on Copyright § 13.01[A] (1981). Most of these elements can be established by the copyright registration certificate. A certificate of registration made within five years after first publication of the work constitutes prima facie evidence of the validity of the copyright and of the facts stated in the certificate. 17 U.S.C. § 410(c). The issuance of a certificate of registration is an indication that the material deposited with the Copyright Office has been examined, that the Register of Copyrights has determined that it constitutes copyrightable subject matter, and that the other legal and formal requirements of the statute have been met. 17 U.S.C. § 410(a). See 3 Nimmer, supra, § 13.01[A].

In the present case, complainant has submitted copyright registration certificates for each of the designs at issue. These certificates indicate that registration was made within five years of the date of first publication. (FF 20, 22). Therefore, these certificates of registration are prima facie evidence of the validity of complainant's copyrights, and the burden of overcoming that presumed validity shifts to respondents. Id.; Games II, 218 U.S.P.Q. at 928, and cases cited therein.

Respondents Chen Wei and Chen Will have submitted certain documents in response to the complaint and in response to complainant's discovery requests that seek to challenge complainant's assertion of copyright ownership. Due to

the fact that these documents constitute unsworn, self-serving and unreliable statements which do not rise to the legal status of an affidavit, I must find that they do not raise a genuine issue of material fact for purposes of deciding complainant's motion for summary determination. Nevertheless, for purposes of complete consideration of the issues of this case, respondents' allegations will be discussed more fully herein.

1. Originality

Chen Wei and Chen Will challenge complainant's claim of originality for these designs by suggesting that Laurel Burch obtained these designs from respondents by selecting designs from a book entitled Japanese Design Motifs. (Chen Wei & Chen Will Answers and Admission of Facts). The facts on this record demonstrate without question that this allegation is without merit.

First, the facts surrounding Laurel's Burch's creation of these designs clearly indicate that she devoted considerable time to creating the designs and adapting them to application to the cloisonne art form. (FF 16, 17, 19, 32). Second, reliable facts show that Ms. Burch's creative work was completed before any contact was made with Chen Wei. (FF 30-33). Finally, a simple comparison of each of Laurel Burch's designs with those shown in the book of Japanese Design Motifs reveals substantial differences between the two which make it highly unlikely that Ms. Burch's designs were based on these Japanese designs. (FF 36, 37).

The quantum of originality necessary to support a copyright is minimal. "Any 'distinguishable variation' of a prior work will constitute sufficient originality to support a copyright if such variation is the product of the author's independent efforts, and is more than merely trivial." 1 Nimmer, supra, § 2.01[B] (citation omitted). The fact that an author's work may be based on a live model does not, by that fact, deprive it of the necessary element of originality. "The opposite proposition would mean that a portrait by Velasquez or Whistler was common property because others might try their hand on the same face. Others are free to copy the original. They are not free to copy the copy." Id. at § 2.08[B], quoting Bleistein v. Donaldson Lithographing Co., 188 U.S. 239 (1903).

Thus, it is well established that an author's rendition of articles found in nature or of other useful articles, such as birds, flowers and fans, as in this case, may meet the required originality for copyright protection. (FF 16, 29). Furthermore, there is also little question that an original work which is embodied in a useful article, if it is aesthetically pleasing in appearance, may be protected by copyright with respect to its form. 1 Nimmer, supra, § 2.08[B]. See 17 U.S.C. §§ 101, 102(a). It is clear that artistic jewelry falls within the scope of protection of the copyright statute. See 1 Nimmer, supra, § 2.08[B] n.85.

In the present case, even if the designs at issue were based on the book of Japanese Design Motifs, and there is no evidence to indicate that this is so, there are substantial variations between Ms. Burch's designs and the

Japanese designs, which variations are apparent upon visual comparison. (FF 37). These variations are more than sufficient to support a claim of originality by Ms. Burch.

Chen Wei's and Chen Will's claim that Ms. Burch saw the Japanese design motifs in 1980 and thereafter obtained copyright registration in 1982 misapprehends the date upon which copyright protection begins. (See Chen Wei and Chen Will Answers and Admission of Facts). Under 17 U.S.C. § 302(a) "[c]opyright in a work created on or after January 1, 1978, subsists from its creation ...." (Emphasis added). A work is created when it is fixed in a copy. 17 U.S.C. § 101. The evidence on this record confirms that creation of these designs by Ms. Burch occurred in early 1980, before she is alleged to have met with the principals of Chen Wei. (FF 30-33). The copyright registration certificates indicate that first publication of these works occurred in May 1980. (FF 20). Thus, the fact that registration of the copyrights occurred in 1982 and 1983 is irrelevant to a determination of the date when copyright protection commenced. (FF 22).

For the foregoing reasons, I find that Chen Wei's and Chen Will's attempts to challenge complainant's claim of originality of these designs by Laurel Burch do not survive close scrutiny.

## 2. Copyrightability of Subject Matter

Section 102(a) of the copyright statute provides as follows:

Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

...

(5) pictorial, graphic, and sculptural works; ....

"Pictorial, graphic, and sculptural works" include two-dimensional and three-dimensional works of fine, graphic, and applied art. 17 U.S.C. § 101.

As noted above, original works of authorship which depict common articles and elements of nature are copyrightable subject matter, provided the requirement of originality is met. In addition, these original works can be embodied in useful articles, such as artistic jewelry, and still be entitled to copyright protection. Thus, respondents' suspicions that animal and botanical designs cannot be registered are incorrect. (See Chen Wei and Chen Will, Answers, and Introduction, ¶ 9; David Rasnick, Letter of November 24, 1984, ¶ 4).

## 3. Citizenship Status of the Author

A published work of copyrightable subject matter as defined by the statute is subject to protection if:

(1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States ...; or

(2) the work is first published in the United States ....

17 U.S.C. § 104(b). The copyright registration certificates for the designs at issue indicate that the author of the works is a United States citizen, and that each of the designs was first published in the United States.

(Complaint, Ex. I). Therefore, I find that the citizenship requirement of the statute has been met as to all of the designs at issue.

#### 4. Compliance with Statutory Formalities

Issuance of a copyright registration certificate by the Register of Copyrights indicates, not only that the material deposited constitutes copyrightable subject matter, but also that the legal and formal requirements of the statute have been met. 17 U.S.C. § 410(a). In view of the issuance of certificates of registration for each of the designs at issue, I find that complainant has presumptively complied with the necessary statutory formalities. (FF 22). In addition, examination of the physical samples of complainant's earrings placed on the record shows that the appropriate copyright notice, © has been affixed in the proper manner and location as to give reasonable notice of the copyright claim. (FF 23). 17 U.S.C. § 401.

## 5. Transfer of Rights

Under the terms of the copyright statute, copyright in a work protected under the statute vests initially in the author of the work, but the ownership of the copyright may be transferred. 17 U.S.C. § 201(a), (d). A transfer of copyright ownership "is an assignment, mortgage, exclusive license, or any other conveyance ... of a copyright or of any of the exclusive rights comprised in the copyright, but not including a nonexclusive license." 17 U.S.C. § 101.

The owner of a copyright is granted the exclusive right to reproduce the copyrighted work in copies, to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, and to authorize the foregoing activities. 17 U.S.C. § 106. The exclusive right to reproduce a copyrighted pictorial, graphic or sculptural work in copies includes the right to reproduce the work in or on any kind of article, whether useful or otherwise. 17 U.S.C. § 113(a).

In this case, the initial copyright owner, Laurel Burch, has granted an exclusive license for all of the designs at issue to LBI. The executed license agreement transferring copyright ownership to LBI has been recorded in the Copyright Office. (FF 21). 17 U.S.C. § 205(a), (b).

In view of these facts, complainant LBI is the owner of the copyrights at issue, and constitutes the proper copyright claimant in this matter. For all of the foregoing reasons, I find that complainant has established validity and ownership of the copyrighted designs at issue. (FF 42).

B. Copying by Respondents

In order to establish that respondents have copied complainant's works, complainant must prove access by respondents and substantial similarity. Copying may be inferred in the absence of direct proof of access where the similarity is overwhelming. Games II, 218 U.S.P.Q. at 932 (citations omitted). See also Personal Computers, 224 U.S.P.Q. at 277. In the present case, there is ample proof both of access and of substantial similarity.

LBI's cloisonne earrings are commercially sold throughout the United States at boutiques and major department stores, as well as at trade shows. (FF 24). In addition, a product catalogue displaying LBI products, including the designs at issue, is freely available. (FF 40). Finally, the evidence establishes that respondent Chen Wei obtained access to Laurel Burch's designs when it first began to produce cloisonne pieces for LBI, and that Chen Wei and Chen Will still retain the moulds for these designs. (FF 33, 85). Other manufacturers in Taiwan are willing and able to make moulds to buyer's specifications upon receipt of a sample. (FF 47, 86). Thus, access by respondents and others to the copyrighted designs is unquestioned.

The record also amply supports complainant's claim of copying as proved by substantial similarity. Comparison of LBI's cloisonne earrings with the unauthorized copies manufactured by respondents indicates that, except for obvious differences in quality, respondents' designs are virtually

indistinguishable from complainant's. Notwithstanding Chen Wei's and Chen Will's claims that they derived their designs from the book of Japanese Design Motifs, it is clear that their designs bear much more similarity to LBI's designs than they do to the designs depicted in the book of Japanese design motifs. (FF 34, 35, 38).

There is also no question but that at least respondents Chen Wei, Chen Will and Ching Sheng were aware of LBI's copyright claims. The investigations conducted of these respondents on behalf of LBI reveal that they were fully aware of U.S. proprietary claims for these designs. (FF 41). The proposed solution for avoiding the legal ramifications of importing infringing goods was to mix the copyrighted designs in with other noncopyrighted jewelry, and send the shipment through a U.S. port having lax customs inspections. (FF 41).

Mr. Rasnick protests that he was not aware of LBI's claim of copyright. (Letter of November 24, 1984). Although this is no doubt true, and may also apply to other domestic respondents in this case, the innocent intent of a respondent is no defense to a charge of copyright infringement. Generally speaking, the innocent intent of an infringer bears only on the remedies available against that party. 3 Nimmer, supra, § 13.08.

For the foregoing reasons, and based on the evidence of record, I find that each of the respondents named herein has engaged in the unfair act of infringement of one or more of complainant's copyrights for its cloisonne earring design motifs. (FF 42).

#### V. PASSING OFF

The Notice of Investigation includes as an alleged unfair method of competition, the unfair act of passing off. Complainant did not address this issue in its motion for summary determination, and further agreed with the Commission investigative attorney's suggestion that this allegation has been deleted from this investigation. (SM, at 1 n.2; CMS, at 12; Tr. 19). Accordingly, the notice of investigation in this matter is amended to delete the allegation of passing off as an unfair act or unfair method of competition. 19 C.F.R. 210.22(c).

#### VI. IMPORTATION AND SALE

The evidence of record indicates that each respondent named in this investigation has participated in some stage of the process of importing the accused cloisonne jewelry into the United States, or in selling it in the United States. (FF 43-53). The foreign respondents who manufacture the accused earrings have acknowledged that their products are sold to Taiwanese exporting companies, and are destined for the United States. (FF 43, 44-48). It is also clear that not only are the domestic respondents selling the accused earrings in the United States, but that such sales are also made by an indeterminately large number of nonparties. (FF 49-53).

The precise volume of imports of the unauthorized copies of LBI's cloisonne jewelry is not certain, largely due to the nonparticipation of

respondents in this investigation. Nevertheless, there is more than ample evidence of sufficient importation of the accused products to support the Commission's jurisdiction. Certain Trolley Wheel Assemblies, Inv. No. 337-TA-161, at 12 (1984).

#### VII. DOMESTIC INDUSTRY

When the unfair acts or methods of competition alleged under Section 337 are based on the infringement of copyrights, the relevant domestic industry is defined as the domestic operations of the complainant devoted to exploitation of the proprietary rights at issue which are the target of the unfair acts or practices. Certain Plastic Food Storage Containers, Inv. No. 337-TA-152, at 76 (1984) (Food Storage Containers); Games I, 214 U.S.P.Q. 217. See also Schaper Manufacturing Co. v. U.S. International Trade Commission, 219 U.S.P.Q. 665, 668 & n.9 (Fed. Cir. 1983) (Schaper). In the present case, complainant LBI is the exclusive licensee of Laurel Burch under the copyrights at issue, and is the exclusive owner of all rights to reproduce or have made copies of the designs, and to distribute and sell these designs in the United States. (FF 21). See Games I, 214 U.S.P.Q. at 227. The Commission has frequently defined the scope of the domestic industry in terms of the article of commerce which is produced by exploitation of the property right. Certain Modular Structural Systems, Inv. No. 337-TA-164, Commission Memorandum Opinion, at 12 (1984) (Structural Systems); Personal Computers, 224 U.S.P.Q. at 284; Certain Limited-Charge Cell Culture Microcarriers, Inv. No. 337-TA-129, 221 U.S.P.Q. 1165, 1181. (1983).

When a portion of the production of a product which embodies complainant's copyright is performed outside of the United States, the existence of a domestic industry must be determined according to an assessment of the nature and significance of the activities carried out in the United States in connection with that product. Certain Minature, Battery-Operated, All-Terrain Wheeled Vehicles, Inv. No. 337-TA-122 (1982), aff'd sub nom. Schaper, 219 U.S.P.Q. 665. One method to assess the nature and significance of domestic activities is to determine the value added to the product by domestic activities as a percentage of the product's total value. Certain Cube Puzzles, Inv. No. 337-TA-112, 219 U.S.P.Q. 322, 334-35 (1982) (Cube Puzzles). An important purpose of this type of evaluation is to determine whether complainant's domestic activities differ in kind from the activities that would normally be performed by an importer. Schaper, 219 U.S.P.Q. at 669.

The activities which are of an appropriate nature to be considered as part of the domestic industry may include production-related activities, such as quality control, repair and packaging. Cube Puzzles, 219 U.S.P.Q. at 334-35. Although the total value added to a product in the United States which will support a finding of a domestic industry will depend on the facts of a particular case, the Commission has found a domestic industry to exist in circumstances in which 50% of the total value of the product is added in the United States. Id. See also Certain Fluidized Supporting Apparatus, Inv. No. 337-TA-182/188, Commission Memorandum Opinion (1984).

In the present case, complainant alleges that the activities performed in the United States by LBI with respect to the cloisonne earrings at issue are sufficient to constitute a domestic industry. The Commission investigative attorney agrees with complainant's assertion. (SM, at 13).

In this case, the cloisonne components are manufactured for LBI by four companies in Taiwan. (FF 84). These components are then delivered to LBI's office in Taiwan, and from there they are shipped to LBI's facilities in San Francisco. (FF 54, 55). It is in the San Francisco facility that additional activities transform these cloisonne components into earrings.

When the cloisonne components arrive in the United States, LBI personnel conduct additional production activities which involve mounting and shaping post studs and earwires, or attaching a clasp, in the case of earrings for nonpierced ears. (FF 56). This activity, in effect, transforms these cloisonne components into articles of commerce. Structural Systems, supra, Personal Computers, 224 U.S.P.Q. at 284. All of the materials used in this assembly operation are purchased in the United States. (FF 57).

A critical aspect of the value of complainant's jewelry lies in its quality. (FF 67). In this case, as in Cube Puzzles, complainant engages in 100% inspection of every pair of cloisonne earrings. This quality control function involves matching to form identical pairs with regard to color,

image, size and design replication. (FF 58). In addition, the inspection checks each earring for defects in the enamel and cracks, and stress testing of the post studs and ear wires. (FF 58). This quality control inspection results in an average rejection of 4-5% of the cloisonne components. (FF 60). Complainant also performs in the United States all mounting of the earrings on cards for purposes of display and packaging of the earrings in protective plastic for sale. (FF 56). Complainant has provided a calculation of the costs of its domestic activities compared to the cost of the items obtained in Taiwan. (FF 61). These figures show that the cost of complainant's activities performed in the United States, exclusive of marketing and promotional expenses, exceeds 50% of the total value of the finished product. (FF 61). See Schaper, 219 U.S.P.Q. 665; and Cube Puzzles 219 U.S.P.Q. 322.

In view of the foregoing facts, I find that complainant's domestic activities not only exceed in both nature and significance, the activities conducted by complainants in Toy Vehicles and Structural Systems, but also that these activities go well beyond those that would normally be conducted by an importer. Schaper, 219 U.S.P.Q. at 669. This conclusion is bolstered by the extensive facilities which LBI has acquired in the United States for production and sale of its products, its rapid growth in the number of employees, and the significant resources devoted to quality control. (FF 59, 64, 66).

The production activities conducted by complainant in mounting post studs and ear wires, assembly, quality control and packaging are a necessary and integral part of the product at issue, in that these activities convert the

imported components into an article of commerce. Schaper, 219 U.S.P.Q. at 668-69; Personal Computers, 224 U.S.P.Q. at 284. All of these activities, together with LBI's distribution and sales activities in the United States, are activities which LBI has the exclusive right to perform in the United States with respect to the copyrighted cloisonne designs in accordance with its license with Laurel Burch. (FF 21). Games I, 214 U.S.P.Q. at 227.

For all of the foregoing reasons, I find that the nature and significance of LBI's activities in the United States with respect to the copyrighted cloisonne earrings at issue are sufficient to constitute a domestic industry for purposes of Section 337. This domestic industry consists of LBI's facilities in San Francisco and New York devoted to production, assembly, quality control, packaging, marketing, distribution and sale of the cloisonne jewelry at issue. (FF 62).

#### VIII. EFFICIENT AND ECONOMIC OPERATION

In order to prevail under Section 337, complainant must establish that the relevant domestic industry is efficiently and economically operated. This may be shown by the use of a computerized planning system, an effective quality control program, profitability of the relevant product line, substantial advertising and promotion expenditures, and employee incentive and benefit programs. Food Storage Containers, at 77; Certain Airless Paint Spray Pumps, Inv. No. 337-TA-90, 216 U.S.P.Q. 465, 470-71 (1981); Certain Pump Top Containers, Inv. No. 337-TA-59 (1974).

There is ample evidence on this record to support a finding in complainant's favor on this issue. LBI has recently made substantial investments to increase the size of its facilities in both New York and San Francisco. (FF 64). It has also recently contracted for a sophisticated computer system that will control inventory, customer orders, accounts payable and accounts receiveable. (FF 65). Much of the evidence demonstrates that LBI is a new, highly successful business which has gained rapid acceptance in the marketplace. This can be seen from dramatic increases in the volume of production, the level of sales revenues, and the number of employees. (FF 63, 66, 70).

A primary objective of LBI is to market a distinctive, high quality product. This is achieved through an exacting, extensive and rigorous quality control program. (FF 67, 68). To attract and retain highly qualified personnel, LBI has adopted both a pension plan and a profit sharing plan. (FF 66). Finally, in order to establish an association in the minds of consumers between Laurel Burch's designs and the LBI name, LBI has expended significant amounts in advertising and promotion. (FF 69).

For all of these reasons, I find that the relevant domestic industry is efficiently and economically operated. (FF 71).

## IX. INJURY

Section 337 makes unlawful unfair acts and unfair methods of competition in the importation of goods "the effect or tendency of which is to destroy or substantially injure" a domestic industry. Complainant's burden of proof on this issue is separate and independent from proof of an unfair act. Certain Spring Assemblies and Components Thereof and Methods for Their Manufacture, Inv. No. 337-TA-88, 216 U.S.P.Q. 225, 243 (1981).

### A. Substantial Injury

Proof of injury to the domestic industry caused by respondents' imports may be established by showing lost customers and lost sales, underselling, volume of imports, and harm to good will and reputation. Certain Vertical Milling Machines and Parts, Attachments, and Accessories Thereto, Inv. No. 337-TA-133, 223 U.S.P.Q. 333, 348 (1984); Food Storage Containers, supra, at 83-84; Games II, 216 U.S.P.Q. at 1113, rev'd on other grounds sub nom. Bally/Midway Mfg. Co. v. U.S. International Trade Commission, 219 U.S.P.Q. 97 (Fed. Cir. 1983) (Bally/Midway).

At the outset, it should be noted that within the framework of the proprietary copyrights at issue in this investigation, the copyright owner, or her licensee, has the exclusive right to exploit the property. Therefore, a particularly relevant inquiry to the injury analysis is the loss of sales to

others by the owner of the exclusive right. Every sale made of an infringing item is generally a sale that should have gone to complainant, and once made, it is a sale irretrievably lost to complainant. Games II, 216 U.S.P.Q. at 1112; Bally Midway, 219 U.S.P.Q. at 102, 103.

The record is replete with evidence of lost customers and lost sales. LBI has encountered many instances in which long standing customers have reduced their purchases from LBI, cancelled orders with LBI or ceased buying from LBI altogether in favor of purchasing the lower cost imports of identical design. (FF 72, 73). Many former customers of LBI feel compelled to purchase the low cost copies in order to remain competitive with other outlets selling the low priced imports. (FF 78, 80).

The price and quality differential between LBI's cloisonne earrings and the imported copies is also substantial. At a retail level, the unauthorized copies of LBI earrings may sell for as little as a third to half of the suggested retail price of authentic LBI earrings. (FF 74, 77). This price difference may be even greater at the wholesale level. (FF 76). A reason for the significant difference in price is the obvious difference in quality. A visual comparison of LBI's earrings with respondents' copies makes it very clear that the copies are of inferior materials and workmanship, and that respondents engage in little or no quality control to ensure that the earrings are matched, or that the earring loops are capable of sustaining normal wear. (FF 82).

The effect of low price and low quality of respondents' earrings compared to LBI's product is detrimental in more than one respect. First, many customers who purchase these earrings may not be particularly sensitive to quality, thus low price becomes the determining factor in their choice of earrings. In addition, however, a fashion and quality conscious customer who is inclined to purchase LBI products because of their distinctiveness and exclusivity will be discouraged from making such a purchase when there are cheap copies of the same item readily available. (FF 80). This effect can only be harmful to LBI's reputation and good will which it is making a concerted, and successful, effort to establish. See Games II, 261 U.S.P.Q. at 1113. There is already evidence that customers of defective copies of LBI earrings have returned to LBI sales locations to obtain refunds in the belief that the defective product originated with LBI. (FF 79).

Although the record provides evidence of a large and pervasive number of imports of unauthorized copies of LBI's cloisonne earring designs, the actual quantity of imports remains elusive. This appears to be attributable not only to the lack of participation by the respondents in this investigation, but also to the fact that there is a significant amount of infringing activity originating from an undefinable number of nonparties. LBI has sent out over 150 cease and desist letters to sellers of the imported copies throughout the United States. These letters are only sent when LBI has a reliable indication that such sales have occurred. (FF 75). Nevertheless, LBI's ability to discover these infringing sales is obviously limited, and it is estimated,

conservatively, that LBI is aware of only about 10% of the total sales of these unauthorized copies. (FF 89). The fact that these copies are available at a wide range of department and discount stores, small boutiques and gift shops, and from a large number of street vendors, emphasizes the widespread penetration of these infringing copies in the United States market. (FF 25, 75, 81).

Therefore, in view of the substantial evidence of record on this issue, I find that the effect of the importation into and sale in the United States of cloisonne earrings which infringe complainant's copyrights is to substantially injure the domestic industry. (FF 90).

B. Tendency to Substantially Injure

When an assessment of the market in the presence of the accused imported product demonstrates relevant conditions or circumstances from which probable future injury can be inferred, a tendency to substantially injure the domestic industry has been shown. Certain Combination Locks, Inv. No. 337-TA-45, RD at 24 (1979). Relevant conditions or circumstances may include foreign cost advantage and production capacity, or substantial manufacturing capacity combined with the intention to penetrate the United States market. Certain Methods for Extruding Plastic Tubing, Inv. No. 337-TA-110, 218 U.S.P.Q. 348 (1982); Reclosable Plastic Bags, 192 U.S.P.Q. 674 (1977). In addition, a tendency to injure may exist in a strong and growing industry where the imports have a demonstrated ability to undersell complainant's products.

Panty Hose, Tariff Commission Pub. No. 471 (1972). The legislative history of Section 337 indicates that "[w]here unfair methods and acts have resulted in conceivable loss of sales, a tendency to substantially injure such industry has been established." Trade Reform Act of 1973, Report of the House Comm. on Ways & Means, H. Rep. No. 93-571, 93d Cong., 1st Sess. at 78 (1973), citing In re Von Clemm, 108 U.S.P.Q. 371 (C.C.P.A. 1955). See also Bally/Midway 219 U.S.P.Q. at 102.

Although complainant has had to rely substantially on secondary evidence with respect to this issue, due to respondents' nonparticipation, this evidence is reliable, and probative on this issue. There appears to be no doubt that all of the unauthorized copies of LBI designs that are imported into the United States originate in Taiwan. (FF 18, 26). The cloisonne manufacturing community in Taiwan is centered around Taipei, and is a very closely knit group. (FF 83).

Since LBI's cloisonne work is also performed in Taiwan, it may initially appear that the foreign manufacturing respondents do not have any production cost advantage. However, respondents' cost advantage is derived from the fact that they seem to conduct virtually no quality control, in contrast to the extensive quality control and completion of production performed by LBI in the United States. It is apparent that a large percentage of the unauthorized copies of Laurel Burch's cloisonne designs manufactured by respondents that have been placed in evidence would never have passed LBI's quality control standards. (FF 82). Respondents' apparent willingness to sell a low quality

product is evidenced by a comment made to a CTS investigator by one of the respondents that he might have a larger quantity of earrings available for sale because he still had some defectives ones in storage. (FF 45).

It is also apparent from the evidence that not only do many of the Taiwanese respondents already have moulds for Laurel Burch's designs, but that even without a mould, they only need a sample of a design, and can begin production of a new design within two weeks. (FF 85, 86, 88). Thus, there are virtually no barriers to entry into this market. Once production has begun, it is estimated that any single manufacturer can produce anywhere from 5,000 pieces per week to 3,200 pieces per day. (FF 87, 88). Therefore, the capacity for production appears to be virtually unlimited. Also, the Taiwanese respondents specialize in manufacturing cloisonne jewelry for export to the United States, and have identified several Taiwanese trading companies to whom they sell for such export. (FF 43, 45-48). The sales price FOB Taiwan, is extremely low, with the result that, in view of the significant value added by LBI in the United States to its cloisonne earrings, LBI is unable to compete with the unit cost offered by respondents. (FF 48, 59, 76, 88).

In view of the foregoing facts, I find that importation of the accused, unauthorized copies of LBI's cloisonne earring designs has the tendency to substantially injure the domestic industry. (FF 90).

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this investigation, in rem jurisdiction over the property at issue, and in personam jurisdiction over the domestic respondents named in this investigation. 19 U.S.C. § 1337.

2. Each of Laurel Burch's designs for cloisonne jewelry for which copyright registration certificates have been obtained from the U.S. Copyright Office as identified in the Notice of Investigation in this matter, is a valid copyright owned by complainant, Laurel Burch, Inc.

3. The cloisonne jewelry manufactured by respondents Chen Wei, Chen Will, Ching Sheng, and Giocoso in Taiwan which are exported to and imported into the United States by respondents National Quality and Perfect Pearl, and which are sold in the United States by respondents Far Eastern Traders, Diamond Sales, Daniel Vianale and Il Hwa, Perfect Pearl and David Rasnick, copy complainant's copyrighted designs, and infringe complainant's copyrights.

4. Copyright infringement is an unfair act or unfair method of competition under 19 U.S.C. § 1337.

5. The domestic industry consists of complainant's operations and facilities in the United States devoted to production, quality control, packaging, marketing, distribution and sale of cloisonne earrings which utilize the copyrighted designs at issue.

6. The relevant domestic industry is efficiently and economically operated.

7. The effect and tendency of respondents' unfair acts and unfair methods of competition is to substantially injure the relevant domestic industry.

8. There is a violation of Section 337.

INITIAL DETERMINATION AND ORDER

Based on the foregoing findings of fact, conclusions of law, the opinion, and the record as a whole, and having considered all of the pleadings and arguments presented orally and in briefs, it is the Administrative Law Judge's DETERMINATION, pursuant to 19 C.F.R. 210.50 and 210.53(c), that there is no genuine issue of material fact as to any issue, and that, as a matter of law, there is a violation of Section 337 in the unauthorized importation into and sale in the United States of the accused cloisonne jewelry.

The Administrative Law Judge hereby CERTIFIES to the Commission this Initial Determination, together with the record in this investigation, consisting of the following:

1. Complainant's Motion for Summary Determination (Motion Docket No. 195-3), together with complainant's memorandum in support thereof, all supporting affidavits and exhibits appended thereto, and the Commission investigative attorney's response thereto;
2. The transcript of the oral argument held in this matter, together with the submissions filed by complainant and the Commission investigative attorney in compliance with Order No. 9;
3. Complainant's Declaration of Eta Morris and Second Supplemental Memorandum in Support of Motion for Summary Determination, together with the declarations and exhibits appended thereto;

4. The Administrative Law Judge's Exhibits 1 and 2.

Further, it is ORDERED THAT:

1. In accordance with 19 C.F.R. 210.44(b), all material heretofore marked in camera for reasons of business, financial and marketing data found by the Administrative Law Judge to be cognizable as confidential business information under 19 C.F.R. 210.6(a) is to be given in camera treatment;

2. Complainant's Motion for Summary Determination, Motion 195-3 is granted pursuant to 19 C.F.R. 210.50 and 210.53(c);

3. Complainant's motion for imposition of sanctions as to certain respondents is granted in part on the terms stated herein, pursuant to 19 C.F.R. 210.36(b);

4. The Secretary shall serve a public version of this Initial Determination upon all parties of record, and the confidential version upon counsel for complainant and upon the Commission investigative attorney;

5. Counsel for complainant shall indicate to the Administrative Law Judge those portions of this Initial Determination which contain confidential business information to be deleted from the Public Version of this Initial Determination not later than March 11, 1985.





- Ex. 9 Affidavit of Scot Alan Miller
- Ex. 10 Affidavit of Hyung Tae Kim
- Ex. 11 Affidavit of Lee Blackwell
- Ex. 12 Affidavit of Jeffrey R. Harris  
Attachments - CTS Chen Will Report  
                  CTS Ching Sheng Report  
                  CTS Giocoso Report  
                  CTS Chen Wei Report
- Ex. 13 Affidavit of Jennifer Kao  
Attachment - David Credit Report of National Quality
- Ex. 14 Affidavit of David T. Y. Lo  
Attachment - David Credit Report of National Quality
- Ex. 15 Affidavit of Yi-Lan Chao  
Attachment - CTS Chen Will Report
- Ex. 16 Affidavit of Yi-Lan Chao  
Attachment - CTS Ching Sheng Report
- Ex. 17 Affidavit of Andy Chao  
Attachment - CTS Giocoso Report

- Exhibit A - Laurel Burch v. Imports of Sorts, Memorandum Opinion and Order
- Exhibit B - Letter of 10/4/83 from A. Datz & Co. to Sperling, Slater & Spitz
- Exhibit C - Invoice of 11/11/83 from Perfect Pearl, Inc. to Harry H. Field
- Exhibit D - Laurel Burch v. Perfect Pearl Co., Inc., Illinois and Perfect Pearl Co., Inc., New York, Consent Judgment

Supplemental Memorandum in Support of Complainant's Motion for Summary Determination

Supplemental Declaration of Laurel Burch

- Exhibit A - Sample and Counter Sample of Preliminary Laurel Burch Design
- Exhibit B - Letter of 12/17/79 from Tracy Luu to Laurel Burch  
          Letter of 2/ 4/80 from Tracy Luu to Laurel Burch  
          Quotation of 2/4/80 from Faratak International to Laurel Burch  
          Letter of 2/11/80 from Laurel Burch to Tracy Luu  
          Letter of 2/24/80 from Laurel Burch to Faratak International
- Exhibit C - Handwritten note - Letterhead of Grand Hotel, Taipei

Exhibit D - Letter of 5/24/80 from Laurel Burch to Jen Shin National Co.  
Letter of 5/27/80 from Laurel Burch to Nan Ho Enterprises  
Letter of 5/27/80 from Laurel Burch to Faratak International  
Letter of 5/27/80 from Laurel Burch to Sun Pal Co.  
Letter of 5/24/80 from Laurel Burch to Handy International  
Letter of 5/28/80 from Sun Pal Co. to Laurel Burch  
Letter of 6/ 5/80 from Sun Pal Co. to Laurel Burch  
Letter of 6/10/80 from Nan Ho Enterprises to Laurel Burch  
Letter of 6/20/80 from Nan Ho Enterprises to Laurel Burch

Declaration of Lenny Lind  
Attachment - 3 Photographs

Second Supplemental Declaration of Victoria Hoffman  
Exhibit A - Photocopy of sample of Commas earring

Notice of Filing of Declaration of Eta Morris

Declaration of Eta Morris  
Attachment - Form A - Copyright Infringement Information  
Form B - Letter re Viewing  
Form C - Letter re Purchasing  
Form D - Letter re Viewing and Purchasing

Second Supplemental Memorandum in Support of Complainant's Motion for Summary Determination

Exhibit A - Letter of 5/9/84 from Skjerven, Morrill, MacPherson & Drucker to Jerry Kelly

Exhibit B - Supplemental Declaration of G. Keith Drissell  
Attachment A - LBI Cost of Goods Analysis 4/1/84-11/31/84

Exhibit C - Supplemental Declaration of Victoria Hoffman

ADMINISTRATIVE LAW JUDGE'S EXHIBITS

- Ct. Ex. 1 - Physical Sample of Commas Earring
- ALJX 2 - Record of Return Receipts from Service of Complaint and Notice  
by ITC Secretary

HLJA 2

INVESTIGATION NO. 337-TA-195

RETURN TO SECRETARY'S OFFICE  
RECORD OF CERTIFIED OR REGISTERED MAIL

SUBJECT CERTAIN CLOISONNE JEWELRY

DATE COMPLAINT SERVED 6-1-84

RESPONSE DUE: 6-25-84

STATE SIDE XX

FOREIGN

CERTIFIED OR REGISTERED NO.

CERTIFIED OR REGISTERED NO.	NAME AND ADDRESS	DATE COMPLAINT RECEIVED BY PARTY	DATE RESPONSE RECEIVED BY COMMISSION	DATE PACKAGE RETURNED
196694	Laurel Burch, Inc. 410 Townsend Street Suite 231 San Francisco, CA 94107	6-14-84		
196695	Johnathan S. Kahan, Esq. Randy E. Miller, Esq. Hogan & Hartson 815 Connecticut Avenue, NW Washington, DC 20006	6-4-84		
196696	Richard Franklin, Esq. Skjerven, Morrill, MacPherson & Drucker 3600 Pruneridge, Suite 100 Santa Clara, CA 95051			
196697	Perferct Pearl Company 8121 Central Park Avenue Skokie, Illinois 60071	6-8-84		
196698	Perferct Pearl Company 104 West 29th Street New York, NY 10001	6-4-84		
196699	Diamond Sales The Card Gallery P.O. Box 17-446 West Hartford, Connecticut 06117			
196700	Mr. Daniel Vianale 401 5th Avenue New York, New York, 10016			

REGISTERED NO.	NAME AND ADDRESS	DATE COMPLAINT RECEIVED BY PARTY	DATE RESPONSE RECEIVED BY COMM.	DATE PACK RETURNED
196701	Il Hwa 401 5th Avenue New York, New York 10016	6-4-84		
196702	Mr. David Kasniek 3203 Overland Avenue No. 7149 Los Angeles, CA 90034	6-5-84		
196703	Far Eastern Traders P.O. Box 3293 New York, NY 10185	6-5-84		
196704	The Answer Ltd. London Square Mall Eau Claire, Wisconsin 54701			
196705	Mr. Charles S. Stark Antitrust Div./US. Dept of Justice Room 7115, Main Justice Pennsylvania Avenue & Tenth Street, NW Washington, DC 20530	6-4-84		
196706	Edward F. Glynn, Jr., Esq. Asst Dir for International Antitrust Federal Trade Commission Room 502-4, Logan Bldg Washington, DC 20580			
196707	Darrel J. Grinstead, Esq. Dept of Health & Human Services Room 5362, North Bldg 330 Independence Avenue, SW Washington, DC 20201	6-4-84		
196708	Richard Abbey, Esq. Chief Counsel U.S. Customs Service 1301 Constitution Avenue, NW Washington, DC 20229	6-4-84		

337-TA-195 SEC N

PS Form 3811, July 1982

● SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one):

Show to whom and date delivered

Show to whom, date, and address of delivery

2.  RESTRICTED DELIVERY (The restricted delivery fee is charged in addition)

Far Eastern Traders  
 P.O. Box 3293  
 New York, NY 10185

PS Form 3811, July 1982

4. TYPE OF SERVICE:  REGISTERED  INSURED  CERTIFIED  COO  EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE *Admnty*  Addressee  Authorized agent

5. DATE OF DELIVERY

6. ADDRESSEE'S ADDRESS (only if required)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

ARTICLE NUMBER 196703

POSTMARK: NEW YORK NY JUN 1982

RETURN RECEIPT

\* GPO: 1982-379-560

337-TA-195 SEC No 2

PS Form 3811, July 1982

● SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one):

Show to whom and date delivered

Show to whom, date, and address of delivery

2.  RESTRICTED DELIVERY (The restricted delivery fee is charged in addition)

Laurel Burch, Inc.  
 410 Townsend Street  
 Suite 231  
 San Francisco, CA 94107

PS Form 3811, July 1982

4. TYPE OF SERVICE:  REGISTERED  INSURED  CERTIFIED  COO  EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE *[Signature]*  Addressee  Authorized agent

5. DATE OF DELIVERY 6/4/84

6. ADDRESSEE'S ADDRESS (only if required) 410 Townsend St

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

ARTICLE NUMBER 196694

POSTMARK: JUN 1982

RETURN RECEIPT

\* GPO: 1982-379-560

337-TA-195 SEC (NOT)

PS Form 3811, July 1982

● SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).  
 Show to whom and date delivered  
 Show to whom, date, and address of delivery  
 RESTRICTED DELIVERY (The restricted delivery fee is charged in addition)

Perferct Pearl Company  
 8121 Central Park Avenue  
 Skokie, Illinois 60071

4. TYPE OF SERVICE:  REGISTERED  INSURED  CERTIFIED  COD  EXPRESS MAIL

ARTICLE NUMBER 196697

I have received the article described above.  
 SIGNATURE *Fern W. W. [Signature]*  Addressee  Authorized agent

5. DATE OF DELIVERY 6-8-84

POSTMARK (may be on reverse side) [Circular postmark: CHICAGO, ILL. JUN 8 1984]

6. ADDRESSEE'S ADDRESS (only if requested)

7. UNABLE TO DELIVER BECAUSE: [ ]

7a. EMPLOYEE'S INITIALS [PW]

\* GPO: 1982-378-600

RETURN RECEIPT

337-TA-195 ART. REC

PS Form 3811, July 1982

● SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).  
 Show to whom and date delivered  
 Show to whom, date, and address of delivery  
 RESTRICTED DELIVERY (The restricted delivery fee is charged in addition)

Johnathan S. Kahan, Esq.  
 Randy E. Miller, Esq.  
 Hogan & Hartson  
 815 Connecticut Avenue, NW  
 Washington, DC 20006

4. TYPE OF SERVICE:  REGISTERED  INSURED  CERTIFIED  COD  EXPRESS MAIL

ARTICLE NUMBER 196695

I have received the article described above.  
 SIGNATURE *[Signature]*  Addressee  Authorized agent

5. DATE OF DELIVERY 6-14-84

POSTMARK (may be on reverse side)

6. ADDRESSEE'S ADDRESS (only if requested)

7. UNABLE TO DELIVER BECAUSE: [ ]

7a. EMPLOYEE'S INITIALS [ ]

\* GPO: 1982-378-600

RETURN RECEIPT

337-TA-195 SEC (NOT)

PS Form 3811, July 1982

● SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).  
 Show to whom and date delivered  
 Show to whom, date, and address of delivery  
 RESTRICTED DELIVERY (The restricted delivery fee is charged in addition)

Perfect Pearl Company  
 104 29th West Street  
 New York, NY 10001

4. TYPE OF SERVICE:  REGISTERED  INSURED  CERTIFIED  COD  EXPRESS MAIL

ARTICLE NUMBER 196698

I have received the article described above.  
 SIGNATURE  Addressee  Authorized agent

5. DATE OF DELIVERY

POSTMARK (may be on reverse side) [Circular postmark: NEW YORK, NY JUN 8 1984]

6. ADDRESSEE'S ADDRESS (only if requested)

7. UNABLE TO DELIVER BECAUSE: [ ]

7a. EMPLOYEE'S INITIALS [ ]

\* GPO: 1982-378-600

RETURN RECEIPT

337-TA-15 SEC NOT

PS Form 3811, July 1982

SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one):

Show to whom and date delivered

Show to whom, date, and address of delivery

2. RESTRICTED DELIVERY (The restricted delivery fee is charged in addition)

II Hwa  
401 5th Avenue  
New York, NY 10016

4. TYPE OF SERVICE:  
 REGISTERED  
 CERTIFIED  
 EXPRESS MAIL  
 INSURED  
 COD

(Always obtain signature of addressee or agent)

SIGNATURE *Diobor Suttle*  Addressed  Authorized agent

5. DATE OF DELIVERY *4 1984*

6. ADDRESSEE'S ADDRESS (only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

ARTICLE NUMBER **196701**

POSTMARK (only for insured mail) *NY 4 1984*

RETURN RECEIPT

\* GPO: 1982-379-503

337-TA-195 SEC NOT

PS Form 3811, July 1982

SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one):

Show to whom and date delivered

Show to whom, date, and address of delivery

2. RESTRICTED DELIVERY (The restricted delivery fee is charged in addition)

Mr. David Rasniek  
3203 Overland Avenue  
No. 7149  
Los Angeles, CA 90034

4. TYPE OF SERVICE:  
 REGISTERED  
 CERTIFIED  
 EXPRESS MAIL  
 INSURED  
 COD

(Always obtain signature of addressee or agent)

SIGNATURE *David Rasniek*  Addressed  Authorized agent

5. DATE OF DELIVERY *6/5/84*

6. ADDRESSEE'S ADDRESS (only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

ARTICLE NUMBER **196702**

POSTMARK (only for insured mail) *LOS ANGELES 6/5/84*

RETURN RECEIPT

\* GPO: 1982-379-503

337-TA-195 SEC NOT

PS Form 3811, July 1982

SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one):

Show to whom and date delivered

Show to whom, date, and address of delivery

2. RESTRICTED DELIVERY (The restricted delivery fee is charged in addition)

Dept. of Health, & Human Services  
Room 306 Independence Ave., S.W.  
Washington, D.C. 20201

4. TYPE OF SERVICE:  
 REGISTERED  
 CERTIFIED  
 EXPRESS MAIL  
 INSURED  
 COD

(Always obtain signature of addressee or agent)

SIGNATURE *KEM R. WILLIAMS*  Addressed  Authorized agent

5. DATE OF DELIVERY **JUN 04 1984**

6. ADDRESSEE'S ADDRESS (only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

ARTICLE NUMBER **196707**

POSTMARK (only for insured mail)

RETURN RECEIPT

\* GPO: 1982-379-503

337-TA-165 SEC 102

PS Form 3811, July 1982

● SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).  
 Show to whom and date delivered  
 Show to whom, date, and address of delivery  
 RESTRICTED DELIVERY (The restricted delivery fee is charged in addition)

Mr. Daniel Vianale  
 401 5th Avenue  
 New York, NY 10016

4. TYPE OF SERVICE:  REGISTERED  INSURED  CERTIFIED  COD  EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE  Addressee  Authorized agent

5. DATE OF DELIVERY

6. ADDRESSEE'S ADDRESS (only if requested)

7a. EMPLOYEE'S INITIALS

7b. EMPLOYEE'S INITIALS

ARTICLE NUMBER 196700

POSTMARK (may be on reverse side)

RETURN RECEIPT

\* GPO: 1982-379-603

337-TA-195 SEC 102

PS Form 3811, July 1982

● SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).  
 Show to whom and date delivered  
 Show to whom, date, and address of delivery  
 RESTRICTED DELIVERY (The restricted delivery fee is charged in addition)

Mr. Charles S. Stark  
 Antitrust Div./US Dept of Justice  
 Room 7115, Main Justice  
 Pennsylvania Avenue & Tenth Street, NW  
 Washington, DC 20530

4. TYPE OF SERVICE:  REGISTERED  INSURED  CERTIFIED  COD  EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE  Addressee  Authorized agent

5. DATE OF DELIVERY

6. ADDRESSEE'S ADDRESS (only if requested)

7a. EMPLOYEE'S INITIALS

7b. EMPLOYEE'S INITIALS

ARTICLE NUMBER 196705

POSTMARK (may be on reverse side)

RETURN RECEIPT

\* GPO: 1982-379-603

337-TA-195 SEC 102

PS Form 3811, July 1982

● SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).  
 Show to whom and date delivered  
 Show to whom, date, and address of delivery  
 RESTRICTED DELIVERY (The restricted delivery fee is charged in addition)

Richard Abbey, Esq.  
 Chief Counsel  
 U.S. Customs Service  
 1301 Constitution Avenue, NW  
 Washington, DC 20229

4. TYPE OF SERVICE:  REGISTERED  INSURED  CERTIFIED  COD  EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE  Addressee  Authorized agent

5. DATE OF DELIVERY

6. ADDRESSEE'S ADDRESS (only if requested)

7a. EMPLOYEE'S INITIALS

7b. EMPLOYEE'S INITIALS

ARTICLE NUMBER 196708

POSTMARK (may be on reverse side)

RETURN RECEIPT

\* GPO: 1982-379-603

INVESTIGATION NO. 337-TA-195 RETURN TO SECRETARY'S OFFICE  
 RECORD OF CERTIFIED OR REGISTERED MAIL

SUBJECT CERTAIN CLOISONNE JEWELRY

DATE COMPLAINT SERVED 6-1-84

RESPONSE DUE: -2-84  
 STATE SIDE  
 FOREIGN XX

CERTIFIED OR REGISTERED NO.	NAME AND ADDRESS	DATE COMPLAINT RECEIVED BY PARTY	DATE RESPONSE RECEIVED BY COMMISSION	DATE PACKAGE RETURNED
	Chen Wei Handicrafts Co., Ltd. 64 Sung Chiang Road Pan Chiao City Taipei, Taiwan	✓		
	Ching Sheng Co., Ltd. 10 Alley, 32 Lane 245 Chung Ching Road Pan Chiao City Taipei, Taiwan	✓		
	Chen Will Handicraft Co., Ltd. 346 Yuan Shan Road Chung Ho City Taipei, Taiwan			
	National Quality Co., Ltd. 9th Floor, No. 140 Chien Kuo N. Road Taipei, Taiwan	✓		
	Glucoso Products Co., Ltd. Miramar Mansion 683-1 Min Tsu East Road Taipei, Taiwan			88-10-88
	Humber Pacific Suite 201 367 Water Street Vancouver, British Columbia Canada			



337-TA-195 SEC NOT

To be filled out by the office of origin.  
A remplir par le bureau d'origine.

Registered article  Letter  Print  Other  
Envoi recommande  Lettre  Imprime  Autre

Insured parcel  Insured value  
Colis avec valeur declaree Valeur declaree \$

Office of mailing Bureau de depot Date of posting Date de depot No. P-021-286-304

Addn Ching Sheng Co., Ltd.  
10 Alley, 32 Lane  
Street 245 Chung Ching Road  
Pan Chiao City  
Place Taipei, Taiwan 板橋

To be completed at destination.  
A remplir a destination.

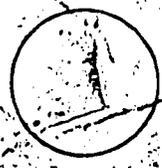
This receipt must be signed by the addressee or by a person authorized to do so by virtue of the regulations of the country of destination, or, if those regulations so provide, by the employee of the office of destination, and returned by the first mail directly to the sender.

Cet avis doit être signé par le destinataire ou par une personne y autorisée en vertu des règlements du pays de destination, ou, si ces règlements le comportent, par l'agent du bureau de destination, et renvoyé par le premier courrier directement à l'expéditeur.

The article mentioned above was duly delivered. Date  
L'envoi mentionné ci-dessus a été dûment livré.

Signature of the addressee Signature du destinataire  
Signature of the employee of the office of destination. Signature de l'agent du bureau de destination.

Postmark of the office of destination  
Timbre du bureau de destination



**POSTAL SERVICE OF THE UNITED STATES OF AMERICA**

*Administration des Postes des Etats-Unis d'Amérique*

**PAR AVION**

Postmark of the office  
returning the receipt  
*Timbre du bureau  
renvoyant l'avis*

65

**POSTAL SERVICE**

*Service des postes*

To be returned by the quickest route (air or surface mail), à découvert and post free. A blue AIR MAIL label or imprint is to be affixed to advices returned by air.

*A renvoyer par la voie la plus rapide (aérienne ou de surface), à découvert et en franchise de port. Une étiquette ou une empreinte de couleur bleue «PAR AVION» est apposée sur les avis renvoyés par avion.*

PS Form 2865, Sept. 1975

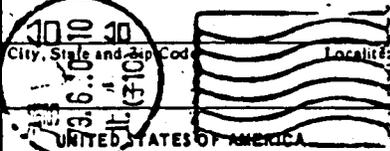
**RETURN RECEIPT**

*Avis de réception*

To be filled out by the sender, who will indicate his address for the return of this receipt.  
*A remplir par l'expéditeur, qui indiquera son adresse pour le renvoi du présent avis.*

Name or firm *Nom ou raison sociale*  
**U.S. INTERNATIONAL TRADE COMMISSION**  
701 "E" STREET, N.W.  
WASHINGTON, D.C. 20436

Street and No. *Rue et no.*



*Etat-Union d'Amérique*

POSTAL SERVICE OF THE UNITED STATES OF AMERICA

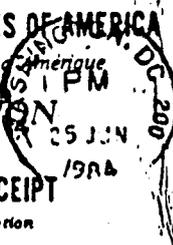
Administration des Postes des Etats-Unis d'Amérique

PAR AVION

RETURN RECEIPT

Avis de réception

Postmaster of the office returning the receipt  
Timbre du Bureau renvoyant l'avis



POSTAL SERVICE

Service des postes

To be returned by the quickest route (air or surface mail), à découvert and post free. A blue AIR MAIL label or imprint is to be affixed to advices returned by air.

A renvoyer par la voie la plus rapide (aérienne ou de surface), à découvert et en franchise de port. Une étiquette ou une empreinte de couleur bleue «PAR AVION» est apposée sur les avis renvoyés par avion.

PS Form 2865, Sept. 1975

To be filled out by the sender, who will indicate his address for the return of this receipt.  
A remplir par l'expéditeur, qui indiquera son adresse pour le renvoi du présent avis.

Name of firm / Nom de laison sociale  
**U.S. INTERNATIONAL TRADE COMMISSION**  
701 14th STREET, N.W.  
WASHINGTON, D.C. 20436

Street and No. / Rue et no.

City, State and Zip Code / Localité

UNITED STATES OF AMERICA / Etats-Unis d'Amérique

3237 1A-795 SEC 1001

Registered article Envoi recommandé	<input checked="" type="checkbox"/> Letter Lettre	<input type="checkbox"/> Parcel Paquet	<input type="checkbox"/> Insured parcel Colis avec valeur déclarée	Insured value Valeur déclarée	No.
Office of mailing Bureau de dépôt			Date of posting Date de dépôt	2021-286-306	

To be filled out by the office of origin  
A remplir par le bureau d'origine

National Quality Co., Ltd.  
9th Floor, No. 140  
Chien Kuo N. Road  
Taipei, Taiwan

To be completed at destination  
A compléter à destination

This receipt must be signed by the addressee or his agent authorized to do so by virtue of the regulations of the country of destination, or if those regulations provide, by the employee of the office of destination, and returned by the final mail directly to the sender.

Cet avis doit être signé par le destinataire ou par un agent autorisé en vertu des règlements du pays de destination, ou, si ces règlements le permettent, par l'agent du bureau de destination, et renvoyé par la dernière courrier directement à l'expéditeur.

The article mentioned above was duly received  
L'objet mentionné ci-dessus a été dûment reçu

Signature of the addressee  
Signature du destinataire

Signature of the employee of the office of destination  
Signature de l'agent du bureau de destination



337-TA-195 SEC 102E

Registered article  Letter  Print  Other  
Envol recommandé  Lettre  Imprimé  Autre

Insured parcel  Insured value  
Colis avec valeur déclarée Valeur déclarée

Office of mailing Bureau de depot Date of posting Date de depot No. R-621-286303

Ad: Chen Wei Handicrafts Co., Ltd.  
64 Sung Chiang Road  
Pan Chiao City  
Taipei, Taiwan

This receipt must be signed by the addressee or by a person authorized to do so by virtue of the regulations of the country of destination, or, if those regulations so provide, by the employee of the office of destination, and returned by the first mail directly to the sender.  
Cet avis doit être signé par le destinataire ou par une personne y autorisée en vertu des règlements du pays de destination, ou, si ces règlements le comportent, par l'agent du bureau de destination, et renvoyé par le premier courrier directement à l'expéditeur.

Postmark of the office of destination  
Timbre du bureau de destination



The article mentioned above was duly delivered.  
L'envoi mentionné ci-dessus a été dûment livré.

Date

Signature of the addressee  
Signature du destinataire

Signature of the employee of the office of destination. Signature de l'agent du bureau de destination.

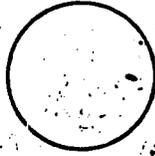
To be filled out by the office of origin. To be completed at destination.  
A remplir par le bureau d'origine. A compléter à destination.

POSTAL SERVICE OF THE UNITED STATES OF AMERICA

Administration des Postes des Etats-Unis d'Amérique

PAR AVION

Postmark of the office returning the receipt  
Timbre du bureau renvoyant l'avis



POSTAL SERVICE

Service des postes

To be returned by the quickest route (air or surface mail), à découvert and post free. A blue AIR MAIL label or imprint is to be affixed to advices returned by air.

A renvoyer par la voie la plus rapide (aérienne ou de surface), à découvert et en franchise de port. Une étiquette ou une empreinte de couleur bleue «PAR AVION» est apposée sur les avis renvoyés par avion.

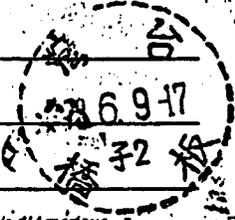
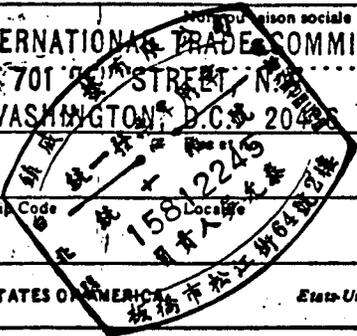
PS Form 2845, Sept. 1975

RETURN RECEIPT

Avs de réception

To be filled out by the sender, who will indicate his address for the return of this receipt.  
A remplir par l'expéditeur, qui indiquera son adresse pour le renvoi du présent avis.

Name or firm Nom ou raison sociale	U.S. INTERNATIONAL TRADE COMMISSION
Street and No.	701 G STREET, N.W. WASHINGTON, D.C. 20446
City, State and Zip Code Localité	15812249
UNITED STATES OF AMERICA Etats-Unis d'Amérique	



CERTIFICATE OF SERVICE

I, Kenneth R. Mason, hereby certify that the attached INITIAL DETERMINATION (PUBLIC VERSION) was served upon Deborah S. Strauss, Esq., and upon the following parties via first class mail, and air mail where necessary, on March 13, 1985.

  
Kenneth R. Mason, Secretary  
U.S. International Trade Commission  
701 E Street, N.W.  
Washington, D.C.

FOR: COMPLAINANT LAUREL BURCH, INC.:

Johnathan S. Kahan  
Randy E. Miller  
HOGAN & HARTSON  
815 Connecticut Avenue  
Washington, D.C. 20006

Richard Franklin  
SKJERVEN, MORRILL, MacPHERSON AND DRUCKER  
3600 Pruneridge, Suite 100  
Santa Clara, California 95051

RESPONDENTS

Chen Wei Handicrafts Co., Ltd.  
64 Sung Chiang Road  
Pan Chiao City  
Taipei, Taiwan

Giocosco Products Co., Ltd.  
Miramar Mansion  
683-1 Min Tsu East Road  
Taipei, Taiwan

con't

