

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

In the Matter of	)	
	)	
CERTAIN PLASTIC FOOD CONTAINERS	)	Inv. No. 337-TA-514
	)	
	)	

**NOTICE OF FINAL DETERMINATION OF VIOLATION OF SECTION 337  
AND ISSUANCE OF GENERAL EXCLUSION ORDER;  
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to find a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. Notice is also given that the Commission has issued a general exclusion order in the above-captioned investigation and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 205-3095. Copies of nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: By a notice published on June 22, 2004, the Commission instituted an investigation into alleged violations of section 337 in the importation and sale of certain plastic food containers by reason of infringement of certain claims of U.S. Patent No. 6,056,138 (the "138 patent"); of U.S. Patent No. 6,196,404 (the "404 patent"); and of U.S. Design Patent No. D 415,420 (the "420 patent"). 69 *Fed. Reg.* 34691 (June 22, 2004). Plastic food containers such as those claimed by the patents in issue are used for packaging foods from restaurants, food processors, and educational and government institutions with food service programs.

On August 19, 2004, complainant Newspring Industrial Corp. ("Newspring") moved for an order directing that each of the two respondents, Jiangsu Sainty Corporation, Ltd. ("Jiangsu") and Taizhou Huasen Household Necessities, Co., Ltd. ("Taizhou"), show cause as to why each should not be found in default for failure to respond to the complaint and notice of investigation. Newspring also requested an order finding the respondents in default if they failed to show cause. On August 27, 2004, the Investigative Attorney ("IA") filed a response in support of the motion for an order to show cause, but opposed any finding that respondents are in default as premature. On August 30, 2004, the ALJ

issued Order No. 5, directing respondents to show cause no later than September 17, 2004 why they should not be held in default.

On September 9, 2004, before the ALJ ruled on the motions for default, Newspring filed motions for summary determinations that there has been a violation of section 337 and that a domestic industry has been established with respect to each of the asserted patents. Newspring sought a recommendation for the issuance of a general exclusion order.

On September 23, 2004, the IA filed a response supporting the motions with respect to most but not all issues. He supported a summary determination that the domestic industry requirement had been satisfied as to each of the patents in issue. He also supported a summary determination that Jiangsu had violated section 337 with respect to each of the patents at issue. As to Taizhou, the IA supported a summary determination of violation as to the '420 patent, but not as to the '138 and '404 patents.

On October 12, 2004, the ALJ issued an ID (Order No. 7) with respect to Newspring's motion to find respondents in default. Noting that neither respondent responded to the notice to show cause, the ALJ found the respondents in default. The Commission determined not to review the ID.

On February 10, 2005, the ALJ issued the subject ID (Order No. 8), granting Newspring's motions for summary determinations with respect to most but not all issues. Consistent with the position of the IA, the ALJ determined that a domestic industry had been established with respect to each of the asserted patents, and that Jiangsu had violated section 337 with respect to each asserted patent as well. He determined that Taizhou had violated section 337 with respect to the '420 design patent, but found that a genuine issue of fact remained as to whether the accused Taizhou products infringed the '138 and '404 utility patents. Accordingly, he denied complainant's motion as to Taizhou in part. The ALJ also recommended the issuance of a general exclusion order and that the bond permitting temporary importation during the Presidential review period be set at 100 percent of the entered value of the infringing imported product. No party petitioned for review of the ID.

On March 18, 2005, the Commission issued a notice of its decision to review the ID. The notice indicated that the review "is for the limited purpose of examining possible formatting and typographical errors contained on one page of the ID." 70 *Fed. Reg.* 13206, 13206 (March 18, 2005). The notice indicated that the Commission sought comments from the parties to the investigation with respect to the issues under review. It also indicated that the Commission sought comments from the parties to the investigation, interested government agencies, and any other interested parties on the issues of remedy, the public interest, and bonding.

On March 28, 2005, the Commission received comments from Newspring and the IA. No reply submissions were received.

Having examined the relevant portions of the record in this investigation, including the ALJ's Order No. 8, and the written submissions on remedy, the public interest, and bonding, the Commission determined to adopt Order No. 8 as its determination, subject to two formatting and typographical modifications to page 15 of the Order. Further details as to the modifications are provided in Commission's opinion issued in connection with this final determination.

The Commission also determined to issue a general exclusion order prohibiting unlicensed entry for consumption of plastic food containers that infringe the claim of U.S. Design Patent No. D 415,420, claim 1 of U.S. Patent No. 6,056,138, or claim 1 of U.S. Patent No. 6,196,404. In so doing, the Commission determined that the public interest factors enumerated in section 337(g) do not preclude the issuance of the aforementioned remedial order and that the bond during the Presidential review period shall be 100 percent of the entered value of the articles in question. The Commission's order was delivered to the President on the day of its issuance.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(g)(2)), and sections 210.41 and 210.50 of the Commission's Rules of Practice and Procedure, (19

C.F.R. §§ 210.41 and 210.50).

By order of the Commission.

Marilyn R. Abbott  
Secretary to the Commission

Issued: May 23, 2005