

UNITED STATES INTERNATIONAL TRADE COMMISSION Washington, D.C.

In the Matter of

CERTAIN OSCILLATING SPRINKLERS,
SPRINKLER COMPONENTS, AND
NOZZLES

Inv. No. 337-TA-448

LIMITED EXCLUSION ORDER

The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the importation and sale of certain oscillating sprinklers, sprinkler components, and nozzles, on February 9, 2001. 66 Fed. Reg. 9721. In its complaint, filed on January 8, 2001, and amended on January 31, 2001, complainant L.R. Nelson Corp. ("Nelson") alleged that Naan Sprinkler and Irrigation Systems, Inc. ("Naan"), Watex International Co., Ltd. ("Watex"), Lego Irrigation Equipment, Inc. ("Lego"), Rain Bird Manufacturing Corporation ("Rain Bird"), Gardena Krest + Kastner GmbH ("Gardena") and Gardena's subsidiary Melnor, Inc. ("Melnor"), Ruey Ryh Enterprises Co., Ltd. ("Ruey Ryh"), Yuan Mei Corp. ("Yuan Mei"), Amagine Garden Inc. ("Amagine"), Aqua Star Industries Inc. ("Aqua Star"), Le Yuan Industrial Co. Ltd. ("Le Yuan"), Shin Da Spurt Water of Garden Tool Co. Ltd. ("Shin Da"), and Orbit Irrigation Products, Inc. ("Orbit") violated section 337 through the importation, sale for importation, and/or sale within the United States after importation of certain oscillating sprinklers, sprinkler components, and nozzles by reason of infringement of certain claims of U.S. Letters Patent Nos. 6,036,117 ("the '117 patent"), 5,645,218 ("the '218 patent"), and 5,511,727 ("the '727 patent").

On May 3, 2001, complainant Nelson moved, pursuant to section 337(g)(I) and Commission rule 210.16, for an order to show cause why respondents Naan and Watex should not be found in

default for failing to respond adequately and properly to the amended complaint and notice of investigation, as required by Commission rule 210.13. The Commission investigative attorney ("IA") supported complainant's motion. The presiding administrative law judge ("ALJ") issued an ill (Order No.4) on March 30,2001, directing Naan and Watex to show cause why they should not be found in default. Neither Naan nor Watex responded to that show cause order.

On May 22,2001, the ALJ issued an ill (Order No.7) finding Naan and Watex in default pursuant to Commission rule 210.16, and ruling that they had waived their rights to appear, to be served with documents, and to contest the allegations at issue in the investigation. No petitions for review of the ID were filed. On June 12,2001, the Commission determined not to review the ID, thereby allowing it to become the Commission's final determination.

On May 4,2001, Nelson moved, pursuant to section 337(c) and Commission rule 210.21(a), to terminate the investigation with respect to respondent Lego. Nelson asserted that it had reached a settlement agreement with Lego in this investigation and that it was withdrawing all allegations made against Lego. No private party responded to Nelson's motion and the IA supported the motion. On May 31, 2001, the ALJ issued an ID (Order No.8) terminating the investigation as to Lego on the basis of the settlement agreement. No petitions for review of the ID were filed. On June 31, 2001, the Commission determined not to review the ID, thereby allowing it to become the Commission's final determination.

On June 26, 2001, Nelson moved, pursuant to section 337(c) and Commission rule 210.21(a), to terminate the investigation with respect to respondent Rain Bird. Nelson asserted that it had reached a settlement agreement with Rain Bird, and that Nelson was releasing Rain Bird from all claims for liability for infringing one patent in controversy, the '117 patent. No party responded to Nelson's motion and the IA supported the motion. On July 9, 2001, the ALJ issued an ID (Order No. 11) terminating the investigation as to Rain Bird on the basis of the settlement agreement. No petitions for

review of the ID were filed. On August 9, 2001, the Commission determined not to review the ID, thereby allowing it to become the Commission's final determination.

On July 18, 2001, Nelson moved, pursuant to 337(c) and Commission rule 210.21(a), to terminate the investigation with respect to respondents Gardena and its subsidiary Melnor. Nelson asserted that it had reached a settlement agreement with Gardena and Melnor, and that Nelson was releasing Gardena and Melnor from all claims *for* liability for infringing the claims in issue of all three patents in controversy, viz., the '117 patent, the '218 patent, and the '727 patent. No private party responded to Nelson's motion and the IA supported the motion. On August 2, 2001, the ALJ issued an ID (Order No. 13) terminating the investigation as to Gardena and Melnor on the basis of the settlement agreement. No petitions for review of the ID were filed. On September 4, 2001, the Commission determined not to review the ID, thereby allowing it to become the Commission's final determination.

On September 13, 2001, Nelson moved to withdraw all allegations related to the '117 patent from the investigation. No party responded to Nelson's motion and the IA supported the motion. On September 25, 2001, the ALJ issued an ID (Order No. 26) granting the motion to withdraw the allegations relating to the '117 patent, and on October 26, 2001, the Commission determined not to review that ID. This withdrawal terminated the investigation with respect to all respondents except Watex.² The withdrawal also terminated the investigation with respect to all patent claims relating to nozzles.

On October 1, 2001, Nelson filed a declaration seeking, pursuant to section 337(g)(I) and rule 210.16(c)(1), entry of a limited exclusion order against Watex that would prohibit the importation into the United States of Watex sprinklers, but not components of sprinklers, that infringe the claims in issue of the '218 and '727 patents. In its declaration, Nelson did not seek issuance of a cease and desist order against Watex. On December 11, 2001, the Commission issued a notice requesting briefing on

the issues of remedy, public interest, and bonding. On January 10, 2002, Nelson, the IA, and Tekni-Flex, Inc., a purchaser of Watex sprinklers, submitted briefs on the issues of remedy, the public interest, and bonding. No briefs were filed by any other person or government agency. Only the IA filed a reply brief.

Section 337(g)(1) of the Tariff Act of 1930, 19 V.S.C. § 1337(g)(I), provides that the Commission shall presume the facts alleged in a complaint to be true, and upon request issue a limited exclusion order and/or cease and desist order if: (1) a complaint is filed against a person under section 337, (2) the complaint and a notice of investigation are served on the person, (3) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice, (4) the person fails to show good cause why it should not be found in default, and (5) the complainant seeks relief limited to that person. Such an order shall be issued unless, after considering the effect of such exclusion, the Commission finds that such exclusion should not be issued.

The Commission finds that each of the statutory requirements for the issuance of a limited exclusion order has been met with respect to defaulting respondent Watex. The Commission further determines that the public interest factors enumerated in section 337(g)(I) do not preclude the issuance of such relief.

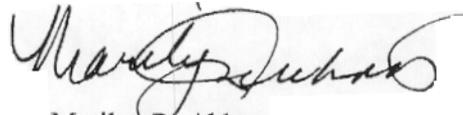
Watex did not participate in the investigation, failed to provide discovery responses, and the record is silent as to prices charged by Watex. In situations where it is not possible to calculate a bond based upon price differentials, the Commission has traditionally set the bond at 100 percent of entered value of the infringing imported product. *Certain Lens-Fitted Film Packages*, Inv. No. 337-TA-406, Commission Opinion at 19 (June 28, 1999), citing *Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing the Same*, 337-TA-372, USITC Pub. No. 2964 at 15 (May 1996). Therefore, the Commission determines that bond under the limited exclusion order during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value of the imported

articles.

Accordingly, the Commission hereby ORDERS THAT:

1. Oscillating sprinklers covered by claims 1,2,3,4, 5, or 14 of U.S. Letters Patent 5,511,727 and/or claims 44, 45, 46, 47, 48, or 49 of U.S. Letters Patent 5,645,218 that are manufactured abroad and/or imported by or on behalf of Watex International Co., Ltd., or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of those patents, i.e., until July 8,2014, except under license of the patent owner or as provided bylaw.
2. Oscillating sprinklers that are excluded by this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100 percent of entered value pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. § 1337(j), from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action.
3. Pursuant to procedures to be specified by the U.S. Customs Service, as the Customs Service deems necessary, persons seeking to import oscillating sprinklers subject to this Order shall certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 and/or 2 of this Order. At its discretion, the U.S. Customs Service may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.
4. In accordance with 19 U.S.C. § 1337(1), the provisions of this Order shall not apply to oscillating sprinklers that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.
6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the U.S. Customs Service.
7. The Secretary shall publish notice of this Order in the Federal Register .

By Order of the Commission.

A handwritten signature in black ink, appearing to read "Marilyn R. Abbott". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Marilyn R. Abbott
Acting Secretary

Issued: March 1, 2002