

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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In the Matter of))
_____))
CERTAIN UNIVERSAL TRANSMITTERS) Inv. No. 337-TA-497
FOR GARAGE DOOR OPENERS))
_____))

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OFFICE OF THE SECRETARY
U.S. INTERNATIONAL TRADE COMMISSION

NOTICE OF COMMISSION DETERMINATION
TO AFFIRM INITIAL DETERMINATION
DENYING TEMPORARY RELIEF

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm the presiding administrative law judge's initial determination finding subject matter jurisdiction and denying temporary relief in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3090. Copies of the Commission's order, the public version of the administrative law judge's (ALJ's) initial determination (ID) on temporary relief, and all other 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 also 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 this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 26, 2003, based on a complaint filed by The Chamberlain Group, Inc. ("Chamberlain") of Elmhurst, Illinois. 68 *Fed. Reg.* 51301 (August 26, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain universal transmitters for garage door openers by reason of infringement of claims 1-8 of U.S. Patent No. RE 35,364 and claims 5-62 of U.S. Patent No. RE 37,986, and violation of section

1201(a)(2) of the Digital Millenium Copyright Act (“DMCA”), 17 U.S.C. §1201(a)(2). The respondents named in the complaint and the Commission’s notice of investigation are Skylink Technologies, Inc.; Capital Prospect, Ltd.; and Philip Tsui (collectively, “respondents”).

At the same time that the Commission instituted the investigation, it provisionally accepted Chamberlain’s motion for temporary relief which accompanied the complaint and which was based on the allegation that there was reason to believe that respondents were in violation of section 337. Chamberlain’s motion for temporary relief was based solely on respondents’ alleged violation of section 1201(a)(2) of the DMCA.

On September 3, 2003, respondents filed their opposition to Chamberlain’s motion for temporary relief. In that opposition, respondents argued, *inter alia*, that the Commission does not have jurisdiction under section 337 to consider an allegation of violation of the DMCA. On September 8, 2003, the ALJ invited separate briefing of this jurisdictional issue.

On September 15, 2003, the respondents requested leave of the ALJ to file a motion for summary determination on the substantive question of whether respondents are in violation of section 1201(a)(2) of the DMCA, to waive the temporary relief hearing, and to suspend the temporary relief schedule. Respondents attached their proposed motion for summary determination to their request for leave. Respondents represented that if their motion for summary determination were denied by the ALJ, and if the Commission agreed with such denial, they would voluntarily enter into a consent order stipulation and proposed consent order attached as an exhibit to their request for leave. All parties supported respondents’ request for leave and, on September 17, 2003, the ALJ granted that request in Order No. 6, treating the attached motion for summary determination as filed, setting a briefing schedule, and staying the temporary relief procedural schedule.

On October 2, 2003, a non-party, Consumers Union, filed a motion for leave to file a submission in support of respondents’ motion for summary determination, including its proposed submission with its motion for leave. Chamberlain opposed the motion; respondents and the Commission investigative attorney did not oppose the motion. On October 15, 2003, the ALJ granted Consumers Union’s motion for leave in Order No. 8 and treated its submission as filed.

On October 10, 2003, Chamberlain filed a motion to strike respondents’ arguments in their reply memorandum on summary determination concerning burden of proof or, in the alternative, to consider rebuttal argument in Chamberlain’s papers filed in a parallel district court action. Both respondents and the Commission investigative attorney opposed Chamberlain’s motion. The ALJ found that the issue of burden of proof was raised in respondents’ summary determination motion and that the arguments in Chamberlain’s district court filing were largely repetitive of those in its response to that motion. Accordingly, the ALJ denied Chamberlain’s motion in its entirety on October 24, 2003, in Order No. 9.

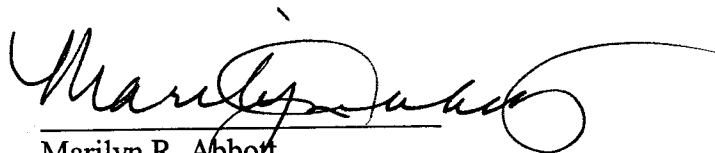
On November 4, 2004, the ALJ issued his ID on temporary relief, finding that (1) the Commission has subject matter jurisdiction over Chamberlain's DMCA claim, and (2) Chamberlain's allegation that respondents violate the DMCA has not been supported as a matter of law. He therefore concluded that there is no basis to issue temporary relief. The Commission understands the ALJ's second conclusion to be a determination that there is no reason to believe a violation of section 337 exists with respect to Chamberlain's DMCA claim because it is unlikely that Chamberlain will succeed on the merits of that claim.

Complainant Chamberlain filed comments with respect to the ID. Respondents and the Commission investigative attorney filed reply comments.

Having examined the relevant record in this investigation, including the ALJ's ID, the written comments on the ID, and the replies thereto, the Commission determined to affirm the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. §1337), and in section 210.66 of the Commission's Rules of Practice and Procedure (19 C.F.R. §210.66).

By order of the Commission.



Marilyn R. Abbott
Secretary to the Commission

Issued: November 24, 2003

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

In the Matter of

**CERTAIN UNIVERSAL
TRANSMITTERS FOR GARAGE
DOOR OPENERS**

Inv. No. 337-TA-497

ORDER

The Commission instituted this investigation on August 26, 2003, based on a complaint filed by The Chamberlain Group, Inc. (“Chamberlain”) of Elmhurst, Illinois. 68 *Fed. Reg.* 51301 (August 26, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, sale for importation, and sale within the United States after importation of certain universal transmitters for garage door openers by reason of infringement of claims 1-8 of U.S. Patent No. RE 35,364 and claims 5-62 of U.S. Patent No. RE 37,986, and violation of section 1201(a)(2) of the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. §1201(a)(2). The respondents named in the complaint and the Commission’s notice of investigation are Skylink Technologies, Inc.; Capital Prospect, Ltd.; and Philip Tsui (collectively, “respondents”).

At the same time that the Commission instituted the investigation, it provisionally accepted Chamberlain’s motion for temporary relief which accompanied the complaint and which was based on the allegation that there was reason to believe that respondents were in violation of section 337. Chamberlain’s motion for temporary relief was based solely on respondents’ alleged violation of section 1201(a)(2) of the DMCA.

On September 3, 2003, respondents filed their opposition to Chamberlain's motion for temporary relief. In that opposition, respondents argued, *inter alia*, that the Commission does not have jurisdiction under section 337 to consider an allegation of violation of the DMCA. On September 8, 2003, the ALJ invited separate briefing of this jurisdictional issue.

On September 15, 2003, the respondents requested leave of the ALJ to file a motion for summary determination on the substantive question of whether they are in violation of section 1201(a)(2) of the DMCA, to waive the temporary relief hearing, and to suspend the temporary relief schedule. Respondents attached their proposed motion for summary determination to their request for leave. Respondents represented that if their motion for summary determination were denied by the ALJ, and if the Commission agreed with such denial, they would voluntarily enter into a consent order stipulation and proposed consent order attached as an exhibit to their request for leave. All parties supported respondents' request for leave and, on September 17, 2003, the ALJ granted that request in Order No. 6, treating the attached motion for summary determination as filed, setting a briefing schedule, and staying the temporary relief procedural schedule.

On October 2, 2003, a non-party, Consumers Union, filed a motion for leave to file a submission in support of respondents' motion for summary determination, including its proposed submission with its motion for leave. Chamberlain opposed the motion; respondents and the Commission investigative attorney ("IA") did not oppose the motion. On October 15, 2003, the ALJ granted Consumers Union's motion for leave in Order No. 8 and treated its submission as filed.

On October 10, 2003, Chamberlain filed a motion to strike respondents' arguments in their reply memorandum on summary determination concerning burden of proof or, in the alternative,

to consider rebuttal argument in Chamberlain's papers filed in a parallel district court action. Both respondents and the IA opposed Chamberlain's motion. The ALJ found that the issue of burden of proof was raised in respondents' summary determination motion and that the arguments in Chamberlain's district court filing were largely repetitive of those in its response to that motion. Accordingly, the ALJ denied Chamberlain's motion in its entirety on October 24, 2003, in Order No. 9.

On November 4, 2004, the ALJ issued his initial determination (ID) on temporary relief, finding that (1) the Commission has subject matter jurisdiction over Chamberlain's DMCA claim, and (2) Chamberlain's allegation that respondents violate the DMCA has not been supported as a matter of law. He therefore concluded that there is no basis for the Commission to issue temporary relief. He stated that if a hearing on permanent relief is held after further discovery, and if, at the hearing, the parties are able to make a more complete record or advance different legal arguments, his findings could change. Complainant Chamberlain filed comments with respect to the ID; respondents and the IA filed reply comments.

Having examined the record in this investigation, including the ALJ's ID, the written comments on the ID, and the replies thereto, the Commission has determined to affirm the ID.

Specifically, we affirm the ALJ's conclusion that the Commission possesses subject matter jurisdiction under section 337 over Chamberlain's allegation of violation of section 1201(a)(2) of the DMCA. As the ALJ noted, section 337 is expressly and by statute "in addition to any other provision of law." A violation of section 1201(a)(2) of the DMCA falls within the broad compass of "unfair methods of competition and unfair acts," and, as explained by the ALJ, Congress has

not acted to deny the Commission jurisdiction over such violations nor is the exercise of such jurisdiction inconsistent with section 337(a)(1)(E).

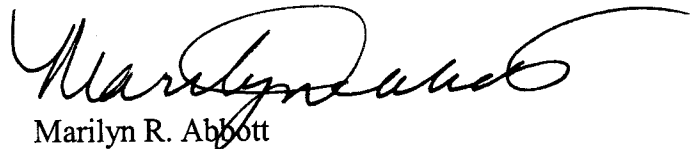
We also affirm the ALJ's conclusion that Chamberlain's allegation that respondents violate section 1201(a)(2) of the DMCA is not supported. We understand this conclusion to be a determination that there is no reason to believe a violation of section 337 exists with respect to Chamberlain's DMCA claim because it is unlikely that Chamberlain will succeed on the merits of that claim.

Finally, we note that complainant and respondent Skylink are engaged in parallel litigation in the United States District Court for the Northern District of Illinois, *The Chamberlain Group, Inc. v. Skylink Technologies, Inc.*, Civ. No. 02 C 6376. We have been advised by the respondents and the IA in their reply comments that the district court has, on summary judgment, ruled adversely to Chamberlain on the identical DMCA claim it raises here. Respondents have stated that they expect that ruling to be entered as a final judgment shortly and that when it is Chamberlain's DMCA claim here will be barred by *res judicata*. Should the proceedings in the district court give rise to *res judicata*, we encourage the parties to raise this issue with the Commission promptly.

Accordingly, it is hereby **ORDERED THAT:**

1. The ALJ's initial determination finding subject matter jurisdiction and denying temporary relief is affirmed; and
2. The Secretary shall serve a copy of this Order upon each party to the investigation and publish notice thereof in the *Federal Register*.

By order of the Commission.

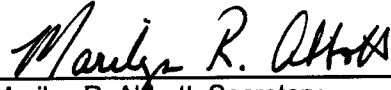
A handwritten signature in black ink, appearing to read "Marilyn R. Abbott", with a long, sweeping flourish extending to the right.

Marilyn R. Abbott
Secretary to the Commission

Issued: November 24, 2003

PUBLIC CERTIFICATE OF SERVICE

I Marilyn R. Abbott, hereby certify that the attached **NOTICE OF COMMISSION DETERMINATION TO AFFIRM INITIAL DETERMINATION DENYING TEMPORARY RELIEF AND ORDER**, was served upon all parties via first class mail and air mail where necessary on November 25, 2003.



Marilyn R. Abbott, Secretary
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