Strategic Enforcement Before the U.S. International Trade Commission – An Evaluation of Recent Enforcement Proceedings

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Investigations under 19 U.S.C. § 1337 (Section 337) before the U.S. International Trade Commission can provide relief against unfair acts in the import trade. The most common causes of action include infringement of U.S. patents, trademarks, trade secrets, as well as other varieties of unfair competition. Litigation before this agency, however, is not without risk. Besides undertaking a significant investment in time and financial resources, an initiating party (complainant) must contend with potential enforcement of the remedies it secures.

Merely "winning" and securing the remedial orders – in the form of a General Exclusion Order (GEO), Limited Exclusion Order (LEO), or the domestic Cease and Desist Order (CDO) – does not guarantee that violators will stop their unlawful acts. Oftentimes it is only the first step to securing the desired outcome, especially in instances where a violating party (respondent) has the will to continue fighting in a highly-profitable market space. In these instances, enforcement proceedings under 19 C.F.R. § 210.75 are available.

The following evaluation of recent enforcement proceedings at the Commission reveals strategy insights derived from the behavior of both enforcers and would-be-circumventers alike.

ENFORCEMENT PROCEEDINGS UNDER 19 C.F.R. § 210.75

Under 19 C.F.R. § 210.75(a)(1), "[t]he Commission may institute an enforcement proceeding upon the filing of an enforcement complaint . . . by the complainant in the original investigation. . . ." Enforcement complaints are subject to a number of regulatory requirements. For example, they must be under oath, signed by the complainant, and describe specific instances of alleged unlawful importations or sales.[1] The complainant further sets forth their allegations of any violations of the Commission's underlying remedial orders and upon filing, the Commission has 30 days to determine whether to institute the proceeding.[2]

After institution, there is a delegation to a presiding administrative law judge (ALJ).[3] Interestingly, in the enforcement context, because of their familiarity with the underlying record, the same ALJ from the violation phase is oftentimes selected to preside over the proceedings.

A procedural schedule is set that typically allows for fact and expert discovery, a full Administrative Procedure Action (APA) evidentiary hearing, and post-hearing briefing. In each of the matters discussed below, a target date of 11-12 months was set, and the presiding ALJ is required to "certify the record and issue the enforcement initial determination to the Commission no later than three months before the target date for completion of a formal enforcement proceeding."[4]

At the conclusion of the enforcement proceeding, the Commission has considerable remedial discretion under 19 C.F.R. § 210.75(a)(4). In other words, it can modify its underlying remedial orders and even issue new CDOs. It can also bring a civil action in district court to recover for the United States a civil penalty accruing for the breach of a CDO and to obtain a mandatory injunction incorporating the relief the Commission deems appropriate to enforce the CDO. Although these civil penalties accrue to the United States, they are severe:

> Any person who violates an order issued by the Commission . . . shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their

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> sale, occurs in violation of the order of not more than the greater of $100,000 or twice the domestic value of the articles entered or sold on such day in violation of the order.[5]

RECENT ENFORCEMENT CAMPAIGNS BEFORE THE ITC

Not every Section 337 investigation results in a violation finding, and enforcement proceedings are only necessary when a party fails to comply with remedial orders. Moreover, enforcement proceedings add another year of litigation and expense. These considerations explain, at least in part, why they are significantly few in number (e.g., less than 10 enforcement complaints filed within the past five years). As detailed below, an evaluation of recent enforcement proceedings from January 1, 2020 to present demonstrates that they can be highly effective in securing desired enforcement outcomes – including settlements – with adverse parties in highly contentious disputes.

Certain High-Density Fiber Optic Equipment and Components Thereof, Inv. No. 337-TA-1194 (*Fiber Optic Equipment*)

In *Fiber Optic Equipment*, complainant Corning Optical Communications LLC (Corning) filed an enforcement complaint against Panduit Corporation (Panduit) alleging a violation of the GEO and CDO. Panduit was one of the 13 originally named respondents from the underlying investigation – the rest defaulted, settled, or entered into consent orders. The high-density fiber optic technology at issue was found to infringe multiple Corning patents. Corning alleged two types of violations in its enforcement complaint: (1) Panduit – directly and through its distributors – continued to sell products that should have been excluded, and (2) Panduit posted an insufficient bond for products sold during the Presidential Review Period (PRP).

After the enforcement proceeding was instituted, Panduit denied any ongoing unlawful activities or that it had not stopped selling covered products to U.S. customers. Panduit revealed it had actually moved manufacturing facilities related to the accused equipment to the U.S. and had informed specific customers of that move – which would circumvent the ability of the Commission to hear any dispute as to those products since there was no requisite importation. The enforcement proceeding progressed through an actual hearing and completion of post-hearing briefing. Rather than wait for a final determination, and run the risk of significant civil penalties, the parties entered into a settlement agreement to end the dispute. The CALJ terminated the proceeding on October 17, 2022 – nearly 11 months after Corning filed its enforcement complaint.

Certain Movable Barrier Operator Systems and Components Thereof, Inv. No. 337-TA-1209 (*Movable Barrier Operator Systems*)

In *Movable Barrier Operator Systems*, complainants Overhead Door Corporation and GMI Holdings, Inc. (OHD) filed an enforcement complaint against respondent Chamberlain Group, LLC (Chamberlain) alleging a violation of the modified LEO and CDO. The patent-based action concerned Chamberlain's garage door technology that was adjudicated during the violation phase as well as Chamberlain's alleged redesigns. OHD alleged Chamberlain violated the CDO in three ways:

(1) Continuing the sale of excluded products;

(2) Selling redesigns without an appropriate non-infringement adjudication by the Commission or Customs; and

(3) Not having posted the required bond for impacted articles during the PRP.

Interestingly, as to the second point, OHD acknowledged that Chamberlain previously secured a Customs ruling under 19 C.F.R. Part 177 finding that Chamberlain's redesigns were outside the scope of the LEO. OHD, however, used the enforcement context to challenge Customs' decision as "incorrect and unduly narrow" in order to test its scope and viability.

After the enforcement proceeding was instituted, Chamberlain denied the allegations and reinforced that its redesigned products were not within the scope of the modified LEO. The parties made it all the way through a hearing and post-hearing briefing before settling the matter between themselves. The presiding ALJ terminated the proceeding on June 14, 2023 – 11.5 months after OHD filed its enforcement complaint.

***Certain Chocolate Milk Powder and Packaging Thereof*, Inv. No. 337-TA-1232 (*Chocolate Milk Powder*)**

In *Chocolate Milk Powder*, complainant Meenaxi Enterprise Inc. (Meenaxi) filed an enforcement complaint against respondents Organic Ingredients, New India, Bharat Bazar, and Coconut Hill (collectively, the enforcement respondents) to enforce a GEO prohibiting importation of chocolate milk powder and packaging that infringed its "Bournvita" trademark. All respondents in the underlying investigation defaulted, including the enforcement respondents, who Meenaxi alleged were continuing to import and sell infringing Bournvita products. Although no CDO was entered in the underlying investigation because no evidence of commercially significant inventory was available, Meenaxi filed an initial enforcement complaint seeking – for the first time – CDOs against the enforcement respondents and imposition of civil penalties.

Ten months after Meenaxi filed the enforcement complaint, the presiding ALJ granted summary determination of violation of the GEO by the enforcement respondents (still in default). Given the evidence showed their domestic operations were undercutting the GEO, the presiding ALJ recommended that CDOs would be an appropriate deterrent to future GEO violations and would provide a mechanism for the imposition of civil penalties. The Commission agreed that CDOs were appropriate, but no civil penalties were imposed at this stage.

A few months later, Meenaxi filed a second enforcement complaint to enforce the GDO and CDOs against the same enforcement respondents. With CDOs now in hand, Meenaxi is seeking enforcement of the remedial orders and the imposition of sanctions and statutory penalties. The proceeding is ongoing, but the same presiding ALJ recently found the enforcement respondents in default once again. Meenaxi has now filed a motion for summary determination seeking the imposition of $5.2 million in total civil penalties against them, in addition to a number of already-issued seizure and forfeiture orders against other parties.

***Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1265 (*Fitness Devices*)**

In *Fitness Devices*, complainants Dish DBS Corporation, DISH Technologies L.L.C., and Sling TV L.L.C. (Dish) filed an enforcement complaint against respondents iFIT Inc., FreeMotion Fitness, Inc., and NordicTrack, Inc. (iFIT) alleging a violation of the Commission's LEO and CDOs. Dish alleged that iFIT continued to import and sell the exact same patent-infringing fitness devices as well as newly released products not previously adjudicated by the Commission. Dish acknowledged that iFIT submitted various redesigns to Customs in a Part 177 proceeding but alleged two types of violations nonetheless: (1) iFIT imported its fitness devices with infringing, legacy software, and pushed an update to customers after the imported fitness devices had been purchased and set up by customers (rather than updating them before importation), and (2) although Customs found two iFIT redesigns were outside the LEO, Customs' decision improperly narrowed certain asserted claims that demonstrated infringement when properly read. Dish sought enforcement of the remedial orders and imposition of maximum civil penalties.

For its part, iFIT denied any violation of the Commission's remedial orders. Just six months after Dish filed its enforcement complaint and before any hearing, however, the parties settled. The CALJ terminated the proceeding on March 19, 2024.

***Certain Raised Garden Beds and Components Thereof*, Inv. No. 337-TA-1334 (*Raised Garden Beds*)**

In *Raised Garden Beds*, complainant Vego Innovations, Inc., (Vego) filed an enforcement complaint against respondents Huizhou Green Giant Technology Co., Ltd. (Green Giant) and Utopban Limited (d/b/a Vegega) alleging violation of the LEO and CDO issued in the underlying investigation based on trade secret misappropriation and unfair competition. Vego alleged that Vegega continued to import and sell raised garden beds – not previously adjudicated by the Commission or Customs – with redesigned wave patterns that misappropriated Vego's trade secret.

After institution, Vegega denied the allegations, alleging it purchased the products from a different manufacturer than Green Giant. Green Giant likewise alleged it was not the manufacturer of the redesigned garden beds. The enforcement proceeding lasted just under five months before the parties settled. The presiding ALJ terminated the proceeding on October 17, 2024.

***Certain Blood Flow Restriction Devices with Rotatable Windlasses and Components Thereof*, Inv. No. 337-TA-1364 (*Blood Flow Restriction Devices*)**

In *Blood Flow Restriction Devices*, complainants Composite Resources, Inc. (CRI) and North American Rescue, LLC (NAR) filed an enforcement complaint against respondents Rhino Inc. and Wuxi Emsrun Technology Co., Ltd. (collectively, Rhino) alleging violation of the CDOs issued by the Commission in the underlying investigation. The products found to infringe complainants' patent, trademarks, and trade dress in the underlying investigation included blood flow restriction devices (tourniquets) with rotatable windlasses. Complainants alleged that Rhino continued to sell covered articles in the U.S., noting they had obtained infringing product samples from Rhino's and its affiliates' websites. Complainants asserted that the Commission had issued a GEO, an LEO, and CDOs against Rhino and were now seeking enforcement of the CDOs and imposition of appropriate civil penalties.

Rhino denied any violation of the Commission's remedial orders, indicating it had proactively shut down accused operations, developed a redesign that it shared with complainants before the enforcement complaint was filed, and even initiated settlement negotiations. Rhino acknowledged, however, that it learned of some "rogue" and unauthorized employee action after conducting an internal investigation, terminated the responsible personnel, and referred the matter to Chinese law enforcement. The parties then quickly settled just 4.5 months after complainants filed their enforcement complaint and before any hearing. The presiding ALJ recently terminated the proceeding on June 26, 2025.

STRATEGY CONSIDERATIONS

Overall, and in sum, formal enforcement proceedings are initiated in a variety of contexts ranging from flagrant disregard for the Commission's remedial orders to crafty circumvention attempts by respondents.

In some instances, formal enforcement complaints may alert an unaware and violating respondent to its own improper conduct.

In other instances, they may allow a complainant to bolster its remedies against flagrant defaulting respondents (e.g., to obtain CDOs not previously acquired during the violation phase).

Regardless of the scenario, settlement was reached in nearly every proceeding discussed above, which highlights their effectiveness as a follow-on tool to ensure resolution and closure when facing motivated adversaries.

Notes

1. Id. § 210.12(a)(1)-(3).
2. Id. § 210.75(a)(1)(i).
3. Id. § 210.75(a)(3).
4. Id.
5. 19 U.S.C. § 1337(f)(2).

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