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RECEIVED-CLERK
U.S. DISTRICT COURT

2009 FEB -3 A 10: 16

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

:

Plaintiff,

:

Hon.

v.

**524,000 COUNTERFEIT "DURACELL"
BATTERIES; 8,880 TOYS BEARING
PIRATICAL "SPIDERMAN" MARKINGS;
90,624 COUNTERFEIT "DURACELL"
BATTERIES; AND 9,648 PIRATICAL
"WINNIE THE POOH" MUGS**

:

Civil Action No. 09

*-478
(DMC)*

Defendants-in-rem

:

**VERIFIED COMPLAINT FOR
FORFEITURE *IN REM***

Plaintiff, United States of America, by its attorney, Ralph J. Marra, Jr., Acting United States Attorney for the District of New Jersey, (By: Peter W. Gaeta, Assistant United States Attorney) brings this complaint and alleges as follows in accordance with Supplemental Rule G(2) of the Federal Rules of Civil Procedure:

NATURE OF THE ACTION

1. This is an action to forfeit and condemn to the use and benefit of the United States of America 524,000 counterfeit Duracell batteries and 90,624 counterfeit Duracell batteries (hereinafter “defendant property”) to enforce the provisions of 19 U.S.C. § 1526(e), which subjects to forfeiture to the United States all merchandise bearing a counterfeit mark imported into the United States of America in violation of 15 U.S.C. § 1124, and 8,880 plastic toys bearing a “Spiderman” mark and 9,648 ceramic mugs containing a “Winnie the Pooh” mark (hereinafter “defendant property”) to enforce the provisions of 19 U.S.C. § 1595a(c)(2)(C), which subjects to forfeiture to the United States all merchandise in which a piratical of copyrighted materials are involved and introduced into the United States of America in violation of 15 U.S.C. § 1124.

THE DEFENDANTS IN REM

2. The defendant property consists of 524,000 counterfeit Duracell batteries and 8,880 toys bearing piratical “Spiderman” markings, valued at \$485,632 and \$3,552 respectively, for a total of \$485,632, that was seized from shipment entry # KX2-00119959 on February 9, 2004 and 90,624 counterfeit Duracell batteries and 9,648 ceramic mugs containing a piratical “Winnie the Pooh” marking, valued at \$83,374.08 and \$1,881.36 respectively, for a total of \$85,255.44, that was seized from shipment entry #KX2-00119967 on February 10, 2004. Both shipments were seized by officers of the United States Customs and Border Protection based upon alerts from the Automated Commercial System that notified officers of shipments associated with Ming Yang Trading (hereinafter “Ming Yang”). It is presently in the custody of a private contractor holding facility known as VSE in New Jersey.

JURISDICTION AND VENUE

3. Plaintiff brings this action *in rem* in its own right to forfeit and condemn the defendant property. This Court has *in rem* jurisdiction over a civil action commenced by the United States under 28 U.S.C. § 1345, and over an action for forfeiture under 28 U.S.C. § 1355(a).

4. This Court has *in rem* jurisdiction over the defendant property under 28 U.S.C. § 1355(b)(1)(A) because acts or omissions giving rise to the forfeiture occurred in the District of New Jersey, and 28 U.S.C. § 1355(b)(1)(B) as provided for in 28 U.S.C. § 1395. Upon the filing of this complaint, the plaintiff requests that the Clerk of the Court issue an arrest warrant *in rem* pursuant to Supplemental Rule G(3)(b)(i), which the plaintiff will execute upon the defendant property pursuant to Supplemental Rule G(3)(c).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1355(b)(1)(B) and 28 U.S.C. § 1395(b) because the defendant property is located in the District of New Jersey.

BASIS FOR FORFEITURE

6. The defendant property is subject to forfeiture pursuant to 19 U.S.C. § 1526(e), which subjects to forfeiture to the United States all merchandise bearing a counterfeit mark imported into the United States of America in violation of 15 U.S.C. § 1124 and 19 U.S.C. § 1595a(c)(2)(C), which subjects to forfeiture to the United States all merchandise in which a piratical of copyrighted materials are involved and introduced into the United States of America in violation of 15 U.S.C. § 1124.

FACTS OF THE CASE

7. On or about August 14, 2003, Immigration and Customs Enforcement (hereinafter "ICE") agents received information from a confidential source stating that Ming Yang Trading, located at 36-09 Bud Place, Flushing, New York, was selling counterfeited Krazy Glue.

8. On or about September 11, 2003, a civil seizure order was executed by Deputy United States Marshals at 36-09 Bud Place, Flushing, to seize the counterfeit trademarked Krazy Glue products. During the course of this seizure, ICE agents observed that the warehouse contained a variety of items that were deemed to be counterfeit.

9. Subsequent to the September 11, 2003 seizure, upon viewing of the Ming Yang website on the internet, an ICE agent located products advertised for sale that were previously seen by the ICE agent present at the warehouse on September 11, 2003. The agent proceeded to order a variety of these items from the website. After the shipment was received by ICE, agents determined that the items ordered from the Ming Yang website were counterfeit.

10. At the request of the ICE Special Agent in Charge (hereinafter "SAC")/New York, agents from SAC/Houston made undercover purchases from Ming Yang. The SAC/Houston agents purchased counterfeit Duracell batteries that were found, by industry experts, to contain mercury. This finding raised a health and safety issue, as the mercury in the batteries have the potential to cause the batteries to explode.

11. On or about November 20, 2003, agents of ICE SAC/New York and SAC/Houston executed search warrants at Ming Yang's two warehouses, located at 36-09 and 36-10 Bud Place, respectively. Approximately 5,387 cartons of items were seized pursuant to these warrants. Jian Zhang, the owner of Ming Yang, admitted to an ICE agent that he imported the defendant property

from China.

12. Pursuant to the above-described investigation into Ming Yang, the U.S. Customs and Border Protection (hereinafter "Agency") was notified by the ICE SAC/New York that Entry# KX2-00119959 was an importation by Ming Yang and subsequently inspected the contents of that importation. The entry documentation reflects that the merchandise was imported from China.

13. On or about February 9, 2004, an Import Specialist examined the shipment and determined that it contained 524,000 "Dinacell" batteries that were counterfeit versions of AA and AAA Duracell batteries bearing the copper and black cylindrical battery design that was registered by Gillette for use in its Duracell batteries under CBP Rec. No. TMK00-00596. The domestic value of the batteries was \$482,080.

14. Additionally, further examination of the container revealed 8,880 plastic toys that were determined to be piratical of the "Spiderman" trademark registered under COP-02-00102. The domestic value of the toys was \$3,552. The total domestic value of the items seized was \$485,632.

15. Pursuant to the on-going investigation into Ming Yang Trading, the Agency was notified by the ICE SAC/New York that Entry# KX2-00119967 was also an importation by Ming Yang whose contents of the container was subsequently inspected. The entry documentation reflects that the merchandise was imported from China.

16. On or about February 10, 2004, an Import Specialist examined the shipment and determined that it contained 90,624 "Dinacell" batteries that were counterfeit versions of AA and AAA Duracell batteries bearing the copper and black cylindrical battery design that was registered by Gillette for use in its Duracell batteries under CBP Rec. No. TMK00-00596. The domestic value of the batteries was \$83,374.08. Additionally, the shipment also contained 9,648 ceramic mugs

containing a “Winnie the Pooh” mark determined to be piratical of the “Winnie the Pooh” trademark registered under COP-97-00046. The domestic value of the mugs was \$1,881.36. The total domestic value of the items seized was \$85,255.44.

17. On or about March 5, 2004 and March 9, 2004, the Agency notified Ming Yang of the seizure and advised that, unless written consent from the trademark holders was obtained, the defendant property would be forfeited and disposed of in accordance with 19 C.F.R. § 133.52.

18. No written consent from any of the above mark holders has been submitted to the Agency by Ming Yang.

19. On March 24, 2004, Ming Yang’s attorney submitted a petition for relief to the Agency. Ming Yang’s attorney has since advised the Agency that he no longer represents Ming Yang.

20. In accordance with 19 U.S.C. § 1607, the defendant property cannot be administratively forfeited because it exceeds \$500,000 in value.

CLAIM FOR FORFEITURE

Counterfeit Merchandise

21. Incorporated herein and made part hereof are allegations contained in paragraphs 1 through 20 of this Complaint.

22. 19 U.S.C. § 1526(e) requires that merchandise bearing a counterfeit mark imported into the United States in violation of 15 U.S.C. § 1124 shall be seized, and in the absence of the written consent of the trademark owner, forfeited for violations of customs laws.

23. 524,000 and 90,624, respectively, “Dinacell” batteries imported into the United States, constitutes merchandise bearing a counterfeit mark.

24. By reason of the foregoing, the defendant property is subject to forfeiture to the United States in accordance with the provisions of 19 U. S. C. § 1526(e).

WHEREFORE, the United States of America requests that the Clerk of the Court issue a warrant for the arrest and seizure of the defendant property; that notice of this action be given to all persons who reasonably appear to be potential claimants of interests in the property; that the defendant property be forfeited and condemned to the United States of America; that the plaintiff be awarded its costs and disbursements in this action and for such other and further relief as this Court deems proper and just.

Piratical Merchandise Introduced Contrary to Law

25. Incorporated herein and made part hereof are allegations contained in paragraphs 1 through 21 of this Complaint.

26. 19 U.S.C. § 1595a(c)(2)(C) allows for the seizure and forfeiture of merchandise introduced into the United States in which copyright, trademark, or trade name protection violations are involved including violations of 15 U.S.C. § 1124.

27. 8,880 plastic toys bearing a “Spiderman” mark and 9,648 ceramic mugs containing a “Winnie the Pooh” mark are piratical of copyright materials.

28. By reason of the foregoing, the defendant property is subject to forfeiture to the United States in accordance with the provisions of 19 U.S.C. § 1595a(c)(2)(C).

WHEREFORE, the United States of America requests that the Clerk of the Court issue a warrant for the arrest and seizure of the defendant property; that notice of this action be given to all persons who reasonably appear to be potential claimants of interests in the property; that the defendant property be forfeited and condemned to the United States of America; that the plaintiff be

awarded its costs and disbursements in this action and for such other and further relief as this Court deems proper and just.

RALPH J. MARRA, JR.
Acting United States Attorney

By:


PETER W. GAETA
Assistant United States Attorney

Dated: February 2, 2009