

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ACTIVE GEAR COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 1149

Decision No. CU 339

Counsel for claimant:

Sidney M. Fields, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,346.50, was presented by ACTIVE GEAR COMPANY and is based upon the asserted loss of monies paid by a Cuban consignee to the Banco Nacional de Cuba in claimant's behalf for goods sold to the consignee. Claimant stated that it has been a national of the United States since April 22, 1949.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

By Commission letter of March 23, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act including evidence of the nationality of the shareholders of claimant. By letter of March 28, 1967, claimant, through counsel, responded and furnished all the evidence requested except proof of nationality of the shareholders of claimant corporation on the date of loss continuously to the date the claim was filed. Thereafter, by letter of June 23, 1967, the Commission, through counsel, again requested proof of nationality of the shareholders of claimant corporation on the date of loss continuously to the date the claim was filed. However, no evidence in response to this correspondence has been received to date.

On July 21, 1967, counsel was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that the claimant has not met the burden of proof in that it has failed to establish that 50 per centum or more of its outstanding stock on the date of loss continuously to the date the claim was filed was owned by United States citizens. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

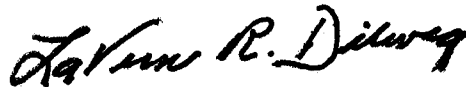
**SEP 20 1967**



Edward D. Re, Commission



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5 (e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)