

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

IN THE MATTER OF THE CLAIM OF

JANTZEN INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1531

Decision No. CU 3203

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by JANTZEN INC. in the amount of \$36,104.79 based upon the asserted loss of payment for merchandise shipped to Cuba, and upon the loss of royalty payments from a Cuban corporation.

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 by 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 502(1)(B) of the Act defines the term "national of the United States" as 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.

The record discloses that the claimant was organized in the State of Nevada in 1947, and that all times between January 1, 1959 and presentation of this claim on April 17, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that on presentation of this claim 99.8% of its outstanding capital stock was owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains a copy of a contract (Jantzen License) executed on February 11, 1959 (to expire on August 31, 1963) between claimant and Original Creations Inc., a corporation organized under the laws of the Republic of Cuba, hereinafter called the "licensee."

Under the terms of said contract, the licensee had the exclusive right to manufacture and sell goods within the Republic of Cuba, using the claimant's designs and trademark for which right it was to pay claimant certain stated royalties on its net sales each month.

The record also contains certified copies of claimant's general ledger for royalties receivable, its sales and royalties reports, and monthly statements of the licensee's sales and the royalties due therefrom, reflecting the following:

<u>Month</u>	<u>Licensee's Net Sales</u>	<u>Royalties</u>
March, 1959	\$40,206.75 (pesos)	\$ 2,621.90
April, 1959	24,740.97	1,580.87
May, 1959	32,270.78	2,141.40
June, 1959	17,206.69	1,076.19
July, 1959	202.20	23.45
August, 1959	1,855.25	58.37
September, 1959	40,139.03	1,998.60
October, 1959	52,886.74	2,627.05
November, 1959	20,072.13	968.12
December, 1959	24,113.55	1,143.90
January, 1960	16.68	credit (10.39)
February, 1960	10,985.55	267.79
March, 1960	17,040.87	991.06
April, 1960	29,421.49	1,893.58
May, 1960	45,414.47	2,988.87
June, 1960	111,025.28	7,618.28
July, 1960	20,219.56	1,403.96
	Total	<u>\$29,393.00</u>

Claimant states that it has not received the aforementioned funds.

The remaining portion of this claim, in the amount of \$6,711.79, is based upon the asserted loss of payment for merchandise shipped to Original Creations Inc. in Cuba.

In support of this portion of the claim, claimant has submitted certified copies of its automated statements of account, general ledger, and trial balance sheets. The claimant has submitted evidence to establish that certain credits were allowed in the account of the licensee, Original Creations, Inc. and were entered against first incurred liabilities or balance due and payable to the claimant. The shipments, and the date thereof, for which claimant has not received payment are set forth herein below:

<u>Date</u>	<u>Amount</u>
March 9, 1960	\$1,611.58
March 15, 1960	104.45
March 22, 1960	581.31
March 29, 1960	3,982.37
March 30, 1960	8.84
April 7, 1960	324.85
April 11, 1960	30.00
April 12, 1960	22.14
June 29, 1960	18.25
July 1, 1960	22.00
August 31, 1960	6.00
	<u>\$6,711.79</u>

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the losses occurred, with respect to royalties, on the date they were due; on September 29, 1959 (the effective date of Law 568) with respect to merchandise falling due prior thereto and on the dates payment became due with regard to payment falling due after September 29, 1959. Thus, the losses occurred as follows:

<u>On</u>	<u>As To</u>
September 29, 1959	\$ 7,420.36
September 30, 1959	23.45
October 30, 1959	58.37
November 30, 1959	1,998.60
December 30, 1959	2,627.05
January 30, 1960	968.12
February 29, 1960	1,143.90
April 10, 1960	1,611.58
April 16, 1960	104.45
April 23, 1960	581.31
April 30, 1960	4,239.77
May 1, 1960	8.84
May 8, 1960	324.85
May 12, 1960	30.00
May 13, 1960	22.14
May 30, 1960	991.06
June 30, 1960	1,893.58
July 30, 1960	3,007.12
August 2, 1960	22.00
August 30, 1960	7,618.28
September 30, 1960	1,403.96
October 1, 1960	6.00

Total \$36,104.79

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The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See Claim of Lisle Corporation, Claim No. CU-0644), as it is so ordered.

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that JANTZEN INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-Six Thousand One Hundred Four Dollars and Seventy-Nine Cents (\$36,104.79) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 16 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feidberg

Sidney Feidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

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).)