

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

IN THE MATTER OF THE CLAIM OF

KAYSER-ROTH CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2111

Decision No. CU 5404

Counsel for claimant:

Harold Glasser, Esq.

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 KAYSER-ROTH CORPORATION for \$48,750.00 based upon the asserted loss of debts due from a Cuban corporation.

Under Title V of the International Claims Settlement Act of 1949, as amended [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 shows that claimant, KAYSER-ROTH CORPORATION, formerly known as Julius Kayser and Company, was organized under the laws of New York and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An officer of claimant has certified that as of December 15, 1960 less than 1.1% of claimant's outstanding stock was owned by non-nationals of the United States. The Commission holds that claimant corporation is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes an agreement concluded on September 9, 1955 between Julius Kayser & Co. (later known as KAYSER-ROTH CORPORATION) and Ellis Hosiery Mills of Cuba, a Cuban corporation hereafter referred to as Ellis, and an amendment to this agreement concluded on February 4, 1959. Pursuant to these agreements, Ellis, as licensee, was given the right to manufacture stockings in Cuba embodying certain patents owned by claimant and to use certain trade-marks. In consideration for such license Ellis agreed to pay claimant royalties of \$12,000.00 per year, payable in quarterly installments of \$3,000.00 each beginning on February 28, 1956 for the fiscal year beginning December 1, 1955; quarterly installments of \$3,750.00 each beginning on February 28, 1957 for the two fiscal years beginning December 1, 1956; and a guaranteed minimum royalty of \$15,000.00 for each year beginning March 1, 1959, March 1, 1960, and March 1, 1961, payable in advance in

twelve equal quarterly installments beginning on March 1, 1959. The amended agreement provided that the rights granted Ellis would terminate on March 1, 1962 unless sooner terminated in accordance with the agreement, but granted Ellis certain options to renew the license.

The record, including an affidavit of the former President of Ellis, establishes that no royalties were paid to claimant for the quarterly installment ending December 1, 1958 and thereafter and that such payments were precluded by the currency controls of Cuban authorities and their refusal to permit the transfer of funds outside of Cuba.

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 in 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 The 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.)

The Commission holds that implementation of Law 568 constituted an intervention by the Government of Cuba in the contractual rights of claimant with respect to the royalty payments. (See Claim of Jantzen, Inc., Claim No. CU-1531.)

In view of the above, the Commission finds, in the absence of evidence to the contrary, that claimant's losses, each in the amount of \$3,750.00, occurred on December 1, 1958 and on the first day of each quarter year

thereafter, the last such loss having occurred on December 1, 1961, as follows:

<u>DUE DATE</u>	<u>AMOUNT</u>
December 1, 1958	\$ 3,750.00
March 1, 1959	3,750.00
June 1, 1959	3,750.00
September 1, 1959	3,750.00
December 1, 1959	3,750.00
March 1, 1960	3,750.00
June 1, 1960	3,750.00
September 1, 1960	3,750.00
December 1, 1960	3,750.00
March 1, 1961	3,750.00
June 1, 1961	3,750.00
September 1, 1961	3,750.00
December 1, 1961	<u>3,750.00</u>
	<u>\$48,750.00</u>

It also appears that claimant has asserted, and the United States Internal Revenue Service has allowed, an income tax deduction for said loss in this amount.

Accordingly, the Commission concludes that claimant's aggregate loss of royalties was \$48,750.00 within the meaning of Title V of the Act.

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), and in the instant case it is so ordered, as follows:

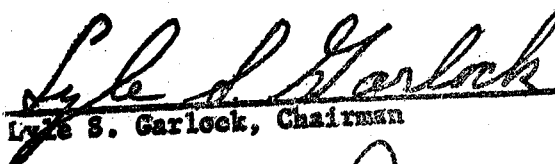
<u>FROM</u>	<u>ON</u>
December 1, 1958	\$ 3,750.00
March 1, 1959	3,750.00
June 1, 1959	3,750.00
September 1, 1959	3,750.00
December 1, 1959	3,750.00
March 1, 1960	3,750.00
June 1, 1960	3,750.00
September 1, 1960	3,750.00
December 1, 1960	3,750.00
March 1, 1961	3,750.00
June 1, 1961	3,750.00
September 1, 1961	3,750.00
December 1, 1961	<u>3,750.00</u>
	<u>\$48,750.00</u>

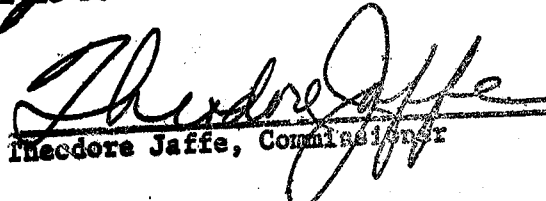
CERTIFICATION OF LOSS

The Commission certifies that KAYSER-ROTH CORPORATION 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 Forty-eight Thousand Seven Hundred Fifty Dollars (\$48,750.00) with interest thereon 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

JUL 29 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, 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).)

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