

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

ROMANOFF CAVIAR COMPANY
480 Lexington Avenue
New York 17, New York

Under the International Claims Settlement
Act of 1949, as amended

Claim No. SOV- 40,579

Decision No. SOV- 2894

GPO 16-72126-1

Counsel for Claimant:

KENNETH N. PARKINSON
Shoreham Building
Washington 5, D. C.

FINAL DECISION

The Commission issued its Proposed Decision on this claim on
October 29, 1958 , a copy of which was duly served upon the
claimant. No objections or request for a hearing having been filed
within twenty days after such service and general notice of the
Proposed Decision having been given by posting for thirty days, it is

ORDERED that such Proposed Decision be and the same is hereby
entered as the Final Decision on this claim, and it is further

ORDERED that the award granted pursuant thereto be certified to
the Secretary of the Treasury.

Washington 25, D. C.

DEC 30 1958

Whitney Hilliland

Leah Pace

Robert L. Kunzig

COMMISSIONERS

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JMS

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PROPOSED DECISION

This claim for \$1,031,000 under Section 305(a)(2) of the International Claims Settlement Act of 1949, as amended, is based upon the following:

(1) Plants in Astrakhan and Baku, Russia,	\$ 6,000
(2) Equipment and supplies in plants described in (1) above,	25,000
(3) Damages for infringement of trademark for period 1919 to 1923, and	500,000
(4) Loss of fishing rights for period 1919 to 1923	<u>500,000</u>
Total	\$ 1,031,000

As to that part of the claim based upon the property described in (1) above, the claimant has furnished no evidence in support of this item other than a mere statement in the completed Statement of Claim form that the plants had a value of \$6,000. It is significant that a Summary of Claim filed with the Department of State on June 14, 1934 by the claimant contains one item for "Value of equipment and material

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at Romanoff Caviar Company packing plant at Astrakhan and Baku . . ." but no part thereof is based upon plants or buildings. In the absence of corroborative evidence, this item of the claim must be denied.

Regarding that item of the claim based upon the property described in (2) above, the claimant has furnished a Declaration of August 27, 1932 by the former manager of the Astrakhan and Baku Branches which shows that the equipment and supplies located therein had a value of 12,300 rubles at the time the Soviet Government confiscated such property, which is in conflict with the alleged value of \$25,000 as shown on the Statement of Claim form filed with the Commission by the claimant and in the aforesaid Summary of Claim filed with the Department of State on June 14, 1934. It is logical to assume that the former manager would have been in a position to more accurately value such property than other individuals. The Commission finds, therefore, that the claimant, a United States national as defined in Section 301(2)(B) of the Act, sustained a loss of 12,300 rubles when the Soviet Government confiscated on December 1, 1917 the equipment and supplies located in its plants in Astrakhan and Baku.

Section 305(a)(2) of the aforesaid Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government. One item of this claim is based upon damages for infringement of a trademark of the claimant by the Soviet Government. Although the claimant was afforded several opportunities to cite authority for the proposition that such a claim was valid under the principles of international law, only a rather vague reference has been made to an international agreement or convention regarding infringement of trademarks and patent rights with some question as to whether Russia was a party thereto.

Assuming, merely for purposes of discussion, that the claimant has met the burden of proving that such a claim is valid under international law

and that the claimant has suffered such a loss, no evidence has been submitted to prove the amount of such claimed loss of \$500,000 other than an allegation in the Statement of Claim form and the aforesaid Summary of Claim. Although the claimant was requested on April 15 and June 19, 1958 to inform the Commission as to the method of calculating this item of the claim, no such information has been submitted. As the claimant has not met the burden of proving this part of the claim, it is hereby denied.

Although the Statement of Claim form and the said Summary of Claim show a claimed value of \$500,000 for that property described in (4) above, the claimant by its letter of August 25, 1958 to its attorney apparently increased that amount to \$1,000,000 which increase is significant because it exactly equals the value of \$500,000 originally placed on the damages for infringement of trademark which item is apparently being disregarded for this letter contains a statement ". . . do not try to put a valuation on trade-mark damages."

The crux of this item of the claim is whether the claimant suffered a loss by reason of a cancellation, annulment or abrogation by the Soviet Government of alleged fishing rights previously granted to the claimant by the sovereign and if so, the amount of such loss. In the absence of a copy of the document whereby such rights were granted to the claimant, it is most difficult, if not impossible, to determine what rights were granted to the claimant, the duration thereof and the method of termination of such grant. Even though the claimant has been requested to furnish primary or secondary evidence for the purpose of showing a grant of fishing rights, the provisions thereof, a loss suffered by the claimant as the result of an action of the Soviet Government and the amount of such loss, no evidence other than the mere allegations of the claimant have been submitted with no corroboration thereof.

Attention is invited to the fact that international and domestic arbitral tribunals in the determination of international claims do not

allow compensation for indirect damages such as the loss of property, loss of profits and the like unless such losses are reasonably certain and are provable with a fair degree of accuracy. Even if it had been proved that the claimant had certain fishing rights granted to it which were cancelled, annulled or abrogated by the Soviet Government, thereby causing a loss or damage to the claimant, the calculation of such a loss would not be possible unless it could be ascertained with reasonable certainty that the right or concession had a definite number of years remaining and the annual net profit resulting from such operation. Although it was suggested in the Commission's letter of September 8, 1958 that any operating figures of the claimant be submitted for the purpose of ascertaining such net profit, only a general statement by the claimant showing a loss of \$1,000,000 was submitted pursuant to this suggestion. As the claimant has not met the burden of proving this item of the claim, it is hereby denied.

The claimant is entitled to an award in the amount of 12,300 rubles with the rubles converted to \$1,599 at the exchange rate of 13 cents prevailing on December 1, 1917 when the supplies and equipment were confiscated by the Soviet Government.

A W A R D

On the above evidence and grounds, that part of the claim based upon equipment and supplies in the plants at Astrakhan and Baku is allowed and an award is hereby made to ROMANOFF CAVIAR COMPANY, claimant herein, in the amount of One thousand five hundred ninety-nine dollars (\$1,599) plus interest at 6% per annum from December 1, 1917 to November 16, 1933 in the amount of One thousand five hundred thirty-one dollars and four cents (\$1,531.04). No determination is made with respect to interest from any period subsequent to November 16, 1933.

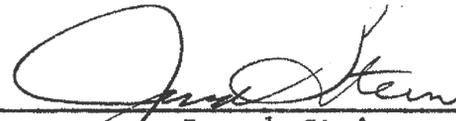
Payment of the award herein shall not be construed to have divested

claimant herein or the Government of the United States on its behalf,
of any rights against the Government of the Soviet Union, for the
unpaid balance, if any, of the claim.

Dated at Washington, D. C.

OCT 29 1958

FOR THE COMMISSION:



Joseph Stein
Director, Soviet Claims Division

Handwritten initials:
JMS
RRR
MPS