

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

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OFFICE OF THE  
US INTERNATIONAL  
TRADE COMMISSION

In the Matter of

CERTAIN SPIRAL GRILLED PRODUCTS  
INCLUDING DUCTED FANS AND  
COMPONENTS THEREOF

Investigation No. 337-TA-426

Order No. 6: INITIAL DETERMINATION Terminating the Investigation Based  
Upon Withdrawal of the Complaint

6000008

By publication of a notice of investigation in the *Federal Register*, this investigation was instituted on January 26, 2000, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, to determine:

(a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain spiral grilled products, including ducted fans, and components thereof by reason of infringement of claims 15, 16, 17, 18, 19, 20, 21, 22, 23, or 24 of U.S. Letters Patent Re. 34,551.

(b) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain spiral grilled products, including ducted fans, and components thereof by reason of misappropriation of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States; and

(c) whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

On June 1, 2000, the complainant, Vornado Air Circulation Systems, Inc., filed "Vornado's Motion to Withdraw Its ITC Complaint and Terminate the Investigation Without Prejudice." Motion Docket No. 426-3.

On June 12, 2000, the respondents, The Holmes Group, Inc., Holmes Products (Far East) Ltd. (Hong Kong), and Holmes Products (Far East) Ltd. (Taiwan), filed their response in support of the complainant's motion to terminate the investigation.

On June 12, 2000, the Commission Investigative Staff of the Office of Unfair Import Investigations ("OUII") filed a response in support of the complainant's motion to terminate the investigation.

Complainant Vornado's motion is based upon the fact that there are four currently pending actions which involve the respondents, and similar products and issues:

- (1) this section 337 investigation;
- (2) a civil action before the United States District Court for the District of Kansas;
- (3) an appeal to the United States Court of Appeals for the Federal Circuit from a summary judgment ruling in the Kansas case to the effect that collateral estoppel precludes Vornado from claiming trade dress rights in its spiral grill design; and
- (4) an action in the United States District Court for the District of Massachusetts.

Complainant Vornado argues that it has agreed with the Holmes respondents to defer litigating the remaining issues in the Kansas case and the case in Massachusetts until a decision issues from the Federal Circuit, and that if the ruling is favorable to Vornado, Vornado will seek "reinstitution" of the section 337 investigation, and the other actions will resume, and yet if

Vornado loses the Federal Circuit appeal, the other actions will be settled. Vornado Mot. at 1-2. It is argued that termination of this investigation would be appropriate because: (1) Vornado and the respondents have agreed to stay or dismiss the other pending actions; (2) the same trade dress issues involved in this investigation are at issue in concurrent proceedings for these same parties; (3) it is uncertain when the Federal Circuit will rule on Vornado's appeal from the Kansas District Court ruling. Briefing has not been concluded, and no oral argument has been set by the Federal Circuit; and (4) the Commission has terminated cases in the past under similar circumstances, in particular *Certain Multibrand Infrared Remote Control Transmitters*, Inv. No. 337-TA-363 (1994).

The respondents argue that this investigation should be terminated based upon Vornado's withdrawal of the complaint. Their position is based largely upon the terms of a "Settlement Agreement," a copy of which is attached to Vornado's motion,<sup>1</sup> which shows that the parties agreed: (1) to exchange releases; (2) to execute a Stipulation of Dismissal with Prejudice in the Kansas Action; (3) to file a motion to terminate this investigation on the basis of withdrawal of the complaint; (4) to file a joint motion in the Kansas action for an Order, *inter alia*, to dismiss plaintiff Holmes's remaining causes of action without prejudice and to stay defendant Vornado's counterclaim; and (5) upon termination of this investigation, to file a joint motion in the related Massachusetts litigation seeking dismissal of the action without prejudice pending the outcome of the pending appeal. Holmes Resp. at 1-2. It is argued that Commission policy and the public interest favor settlements, and moreover that the public interest will not be harmed by the

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<sup>1</sup> A copy of Vornado's motion (which includes the Settlement Agreement) is attached hereto.

proposed settlement, noting that the Commission concurred with the settlement in the Kansas action. *Id.* at 2.

The Commission Investigative Staff supports Vornado's motion to terminate this investigation, arguing, *inter alia*, that "further litigation of the trade dress issue is best postponed until after the Federal Circuit rules on Vornado's appeal from the Kansas court. Should the Federal Circuit decide adversely to Vornado, litigation of the trade dress matter at the Commission would likely prove to be a waste of the resources of the Commission and the private litigants." OUI Resp. at 3. The Commission Investigative Staff does not support termination of the investigation "with prejudice" or "without prejudice."

Commission Rule 210.21(a)(1) provides, as follows:

Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 for an order to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein, or for good cause other than the grounds listed in paragraph (a)(2) of this section.<sup>2</sup> The presiding administrative law judge may grant the motion in an initial determination upon such terms and conditions as he deems proper.

19 C.F.R. § 210.21(a)(1).<sup>3</sup>

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<sup>2</sup> 19 C.F.R. § 210.21(a)(2) addresses other means of terminating investigations, including settlements, agreements to submit matters for arbitration, and consent orders.

<sup>3</sup> This Rule appears to have formalized at least part of the Commission's prior practice, which allowed termination based upon withdrawal of the complaint, while permitting the Administrative Law Judge to take note of the surrounding circumstances, and if appropriate, to deny termination on that basis. See *Certain Vehicle Security Systems and Components Thereof*, 337-TA-355, Order No. 16 (Feb. 7, 1994), Order No. 17 (Mar. 21, 1994), Order No. 18 (Apr. 19, 1994), *aff'd*, 59 Fed. Reg. 29819 (1994)(Comm'n Determination Not to Review Order No. 18); *Certain Mail Extraction Desks and Components Thereof*, Inv. No. 337-TA-264, Comm'n Op. at 6-7 (May 17, 1988).

Although this investigation has advanced by nearly six months, no party expresses any interest in having this investigation continue.<sup>4</sup> Indeed, the complainant and all the respondents have agreed to termination of this investigation on the basis of withdrawal of the complaint, and such a termination of this investigation is supported by the Commission Investigative Staff. In addition, public policy supports the conservation of public and private resources, and further the Administrative Law Judge is aware of no public interest considerations that necessitate the continuation of this investigation. Consequently, the Administrative Law Judge finds that this investigation should be terminated, and the complaint should be considered as having been withdrawn.

The question remains as to whether this investigation can or should be terminated "without prejudice," as requested by complainant Vornado. As stated by Vornado, the Commission has in the past allowed termination of investigations on the basis of withdrawal of the complaint as in the case of *Infrared Remote Control Transmitters*, which also involved parallel district court litigation. Furthermore, in that case, the court had granted summary judgment in favor of parties that were respondents in the section 337 investigation. However, as pointed out by the Commission Investigative Staff, in that instance, the Administrative Law Judge issued an Initial Determination terminating the investigation with prejudice if the summary

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<sup>4</sup> These circumstances stand in contrast to those relating to Order No. 4, in which the Administrative Law Judge denied the respondents' Motion No. 426-2 for a stay of this investigation. The motion for a stay was based upon the concurrent trade dress and patent infringement proceedings in the United States District Court for the District of Kansas, *The Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, No. 99-1499-WEB, as well as the possibility of collateral estoppel in this investigation based upon prior decisions rejecting Vornado's trade dress claims. The respondents' motion for a stay was opposed by the complainant and the Commission Investigative Staff.

judgment were reversed, and without prejudice if the summary judgment were upheld on appeal. The Commission reviewed the Administrative Law Judge's decision with respect to the question of prejudice, and stated that "whether termination of an investigation is styled with or without prejudice will have no effect on whether another investigation will be instituted based upon a subsequently filed complaint. Rather, the Commission will, at such time as another complaint is filed, have to determine whether institution of an investigation is appropriate." *Infrared Remote Control Transmitters*, Comm'n Order at 3 (Apr. 18, 1994). See also *Certain Memory Devices with Increased Capacitance and Products Containing Same*, Inv. No. 337-TA-371, Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Respondents Hitachi, Ltd. and Hitachi America, Ltd. (July 13, 1995) ("[A]n administrative law judge's styling of a termination as 'with prejudice' or 'without prejudice' has no effect on whether another investigation will be instituted based on a subsequently filed complaint.").

Nevertheless, those statements by the Commission issued a number of years ago, and before jurisprudence had been developed under the current Commission Rule 210.21, which explicitly states that a complainant may withdraw a complaint under the terms and conditions deemed proper by the Administrative Law Judge.


Thus, the law and Commission policy concerning the issue of "prejudice" seems to be somewhat unsettled. It is not clear whether the Commission would expect a recommendation or finding in the Initial Determination concerning this issue. However, it can be stated that several weeks ago the parties informally notified the office of the Administrative Law Judge that some manner of settlement was already under discussion, and although those discussions were

protracted, the parties have in essence negotiated a truce in their war at least with respect to the Commission investigation, which may, according to their agreement, be resumed at a later time. These circumstances present a "grey area" in terms of traditional prejudice analysis, for while withdrawal of the complaint has occurred relatively close to the hearing, the opposing parties apparently had notice early on and participated in discussions with the complainant with the goal of agreement to terminate this proceeding. It is therefore difficult to say that the respondents have been prejudiced. Indeed, they have essentially agreed that they have not been not prejudiced. Consequently, these circumstances do not clearly fit the pattern in which prejudice would attach to a complainant's request for termination. The Administrative Law Judge would not find prejudice in this instance, if requested by the Commission to consider that question.

Accordingly, for the reasons stated above, it is the INITIAL DETERMINATION of the Administrative Law Judge that the complainant's Motion No. 426-3 to terminate this investigation is GRANTED.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues herein.

So ORDERED.

  
\_\_\_\_\_  
Sidney Harris  
Administrative Law Judge

Issued: June 16, 2000

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C. 20436  
Before Sidney Harris  
Administrative Law Judge

In the Matter of

CERTAIN SPIRAL GRILLED PRODUCTS)  
INCLUDING DUCTED FANS AND  
COMPONENTS THEREOF



Investigation No. 337-TA-426

TOO JAN -1 1999

RECEIVED  
OFFICE OF THE SECRETARY  
U.S. INTERNATIONAL TRADE COMMISSION

**VORNADO'S MOTION TO WITHDRAW ITS ITC COMPLAINT  
AND TERMINATE THE INVESTIGATION WITHOUT PREJUDICE**

Complainant Vornado Air Circulation Systems, Inc. ("Vornado") hereby requests that the complaint it filed with the U.S. International Trade Commission ("ITC") on November 26, 1999 be withdrawn and seeks termination of the investigation without prejudice.

Currently pending for these parties are four actions. First, is this §337 investigation by the Commission. Second, there is a pending civil action before the U.S. District Court for the District of Kansas. Third, there is an appeal from the Kansas case on a summary judgment disposition pending at the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). Finally, there is a pending action before the U.S. District Court for the District of Massachusetts. All four actions involve the same parties and issues involving products that are made by the parties.

In the Kansas case, the district court ruled on summary judgment that collateral estoppel precludes Vornado from claiming protectable trade dress rights in its spiral grill design, which is incorporated in the vast majority of Vornado's products. The district court certified that ruling under Fed. R. Civ. P. 54(b), and the collateral estoppel/trade dress issue is now before the



Federal Circuit. Vornado filed its appeal brief with the Federal Circuit on May 8, 2000, and Holmes's appellee brief is due on or about June 19, 2000. Oral argument has not yet been scheduled. There are still pending patent issues in the Kansas case.

Both Vornado and Holmes have agreed to defer litigating the remaining issues in the Kansas case as well as the pending action in Massachusetts and await a decision from the Federal Circuit. If the Federal Circuit rules in favor of Vornado, then Vornado will seek reinstatement of the Commission's §337 investigation, and all other actions will resume. If Vornado loses the Federal Circuit appeal, all other actions will be settled.

Termination of this investigation would be appropriate, because (1) the parties have agreed to stay or dismiss the other pending actions; (2) the same trade dress issues involved in the ITC proceeding are also at issue in concurrent proceedings for these same parties; (3) it is uncertain when the Federal Circuit will rule on Vornado's appeal to that court from a district court ruling; and (4) the Commission has terminated cases in the past under similar circumstances.

#### *The Parties Have Agreed To Stay Or Dismiss The Other Pending Actions*

On March 28 and 29, 2000, the parties participated in mediation proceedings mandated by the district court of Kansas. As a result of that mediation, the parties have entered into an agreement that contemplates a "dismissal" of the Kansas and Massachusetts proceedings with the right to re-open each action (depending on the ruling from the Federal Circuit), as well as this motion to the ITC (a copy of the agreement and attachments are enclosed herewith).

Under the terms of the stipulated agreement, the parties will resume litigation of all pending claims if Vornado prevails on appeal and the Federal Circuit reverses the collateral estoppel ruling of the Kansas district court. Should this occur, the agreement includes an

understanding by the parties that Vornado, without objection by Holmes, will request the Commission to reinstitute a §337 action. However, should Holmes prevail at the Federal Circuit, and should the Federal Circuit affirm the collateral estoppel ruling of the Kansas district court, the parties have agreed to dismiss all claims pending in other proceedings. In other words, Vornado would not seek to reinstitute the §337 investigation at the ITC and Holmes would not proceed in its two district court actions.

*The Same Issues Involved In The ITC Proceeding Are  
Also At Issue In Concurrent Proceedings*

The same trade dress issues, the same spiral grill, and the same products at issue in the ITC's investigation are at issue in the Federal Circuit appeal. Therefore, it is in the interest of judicial economy, as well as the interest of this Commission, the Staff, the Administrative Law Judge, and the parties to terminate this investigation.<sup>1</sup> Moreover, because the Federal Circuit has appellate review over any rulings by the ITC, the Federal Circuit should issue its ruling before the ITC proceeds with its investigation.

*It Is Uncertain When The Federal Circuit Will Rule On Vornado's Appeal*

The Federal Circuit's ruling may not issue until the Commission's investigation is completed. Therefore, because the parties cannot determine when the Federal Circuit will rule, it is Vornado's belief that termination of this investigation would be more efficient than requesting an open-ended stay, which, the parties recognize the Commission disfavors. Moreover, in view

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<sup>1</sup> Vornado recognizes that the asserted patent issues pending in the ITC investigation are outside the scope of the Federal Circuit appeal. However, Vornado seeks to avoid piece meal litigation, especially since there is substantial overlap in the accused products in the trade dress claims and patent claims and since the patent issues have been stayed in the Kansas litigation.

of the Federal Circuit's appellate jurisdiction with the ITC, and again, in the interest of judicial economy, the Federal Circuit's ruling should occur first. A termination of the Commission's investigation would allow that to happen.

***The Commission Has Terminated Cases In The Past Under Similar Circumstances***

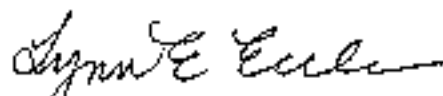
The ITC faced a similar factual situation in *In re Certain Infrared Remote Control Transmitters*, No. 337-TA-363 (1994). In *Infrared Remote Control Transmitters*, as here, there was a concurrently pending parallel district court litigation. As here, the district court had made a summary judgment ruling adverse to the complainant on a legal issue that was also at issue in the ITC investigation. The complainant was appealing the issue to the Federal Circuit. The Administrative Law Judge permitted the complainant to withdraw the complaint and issued an ID terminating the investigation with the proviso that the ruling was without prejudice if the district court ruling was reversed but with prejudice if the district court ruling was affirmed. (337-TA-363, ID, April 18, 1994). This is exactly what Vornado seeks in this case.

***Conclusion***

Holmes is not opposed to Vornado seeking leave to withdraw the complaint and terminating the investigation without prejudice. Moreover, Holmes has agreed that it will not contest Vornado's request to reinstitute a §337 action if the Federal Circuit reverses the Kansas district court's ruling on the collateral estoppel issue. Accordingly, a termination of this investigation is respectfully requested.

Respectfully submitted,

VORNADO AIR CIRCULATION SYSTEMS, INC.



---

Peter W. Gowdey

Lynn E. Eccleston

Lisa A. Dunner

Samuel P. Burkholder

Pillsbury Madison & Sutro

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Washington, D.C. 20005-3918

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June 1, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of:

**VORNADO'S MOTION TO WITHDRAW ITS ITC COMPLAINT AND TERMINATE THE  
INVESTIGATION WITHOUT PREJUDICE**

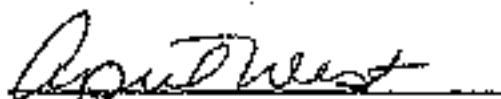
has been forwarded by hand delivery this 1<sup>ST</sup> day of June, 2000, to:

Donna R. Koehnke (Original and 6 copies)  
Office of the Secretary  
U.S. International Trade Commission  
500 E. Street, S.W., Room 112  
Washington, D.C. 20436

Honorable Sidney Harris (2 copies)  
Administrative Law Judge  
U.S. International Trade Commission  
500 E. Street, S.W., Room 112  
Washington, D.C. 20436

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Office of Unfair Import Investigations  
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May 31, 2000

VIA Fed Ex

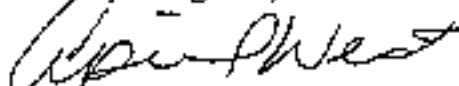
James W. Dabney, Esq.  
PENNIE & EDMONDS, L.L.P.  
1155 Avenue of the Americas  
New York, NY 10036

Re: The Holmes Group, Inc v. Vornado Air Circulation Systems  
Our Ref. No. 9316/0265601

Dear Mr. Dabney:

Attached is the settlement agreement with Pete's signature.

Best regards,



April West

Enclosures

cc: Marcia Sundeen

## SETTLEMENT AGREEMENT

Settlement Agreement dated as of May \_\_\_\_, 2000, by and between Vornado Air Circulation Systems, Inc. (hereinafter "Vornado") and The Holmes Group Inc. (hereinafter "Holmes") (collectively "the parties").

WHEREAS the parties are currently involved in three civil actions:

1. a civil action brought by Holmes against Vornado in the United States District Court for the District of Kansas, CA No. 99-1499-WEB (hereinafter, the "Kansas litigation");
  2. an investigation at the International Trade Commission requested by Vornado, No. 337-TA-426 (hereinafter, the "ITC investigation"); and
  3. a civil action brought by Holmes in the United States District Court for the District of Massachusetts, CA No. 00-40052 (hereinafter, the "Massachusetts litigation");
- and

WHEREAS, on March 27, 2000, the District Court in the Kansas litigation issued a Final Judgment in favor of Holmes and against Vornado on the First Cause of Action pleaded by Holmes in its Complaint in the Kansas litigation dated December 8, 1999 (the "Kansas Judgment"); and

WHEREAS, Vornado has filed a Notice of Appeal from the Kansas Judgment;

and

WHEREAS, without admitting any liability, the parties are desirous of settling all three civil actions upon the terms and conditions hereof,

NOW, THEREFORE, in consideration for the promises, representations, and agreements made or to be made by the parties pursuant to this Agreement, the parties hereto agree as follows:

1. Upon execution of this Agreement, Vornado will deliver to Pennie & Edmonds LLP ("P&E") a Stipulation of Dismissal With Prejudice in the form of Exhibit 1 hereto and executed by counsel of record for Vornado and the United States International Trade Commission (the "ITC") in the Kansas Action. The stipulation will be held in escrow by P&E, and will not be filed, unless and until the Kansas Judgment is affirmed on appeal. If the Kansas Judgment is reversed on appeal, then P&E will return the stipulation to the counsel for Vornado, unfiled.

2. Within ten days of executing this Agreement, Vornado shall file a motion, with the concurrence of Holmes and the Staff at the ITC, to terminate the ITC investigation without prejudice on the basis of withdrawal of the complaint.

3. Within ten days of executing this Agreement Holmes and Vornado shall file a joint motion in the Kansas litigation seeking entry of an Order in the form of Exhibit 2 hereto.

4. Within ten days of the issuance of Order terminating the ITC investigation, Holmes and Vornado shall file a joint motion in the Massachusetts litigation seeking entry of an Order in the form of Exhibit 3 hereto.

5. In the event that the Kansas Judgment is reversed on appeal either party shall have the right to re-open the Kansas litigation and the Massachusetts litigation upon motion.



and without objection from the other party, and Vornado shall, without objection from Holmes, have the right to reinstitute the ITC investigation.

6. The parties agree to release each other including their officers, directors, dealers, subsidiaries, affiliates, and customers from any liability arising under any cause of action asserted in any or all of the now pending three civil actions in the event the Kansas Judgment is affirmed on appeal.

7. Any action for violation of this Settlement Agreement shall be subject to the full enforcement powers of the United States District Court for the District of Kansas. The validity, enforcement, and construction of this Settlement Agreement shall be governed by the laws of the State of Kansas and the applicable Federal Rules.

8. This Settlement Agreement contains the entire understanding between the parties. This Settlement Agreement may not be amended or superseded, except in writing, signed by the parties hereto. This Agreement shall be binding on and inure to the benefit of the parties successors, heirs, and assigns.

9. This Agreement may not be assigned by any party hereto to a third party without the express written consent of each of the parties to this Agreement except in an instance where a party to this Agreement is sold or merged to another entity in which instance the entity shall be bound by the terms herein.

10. Should any terms of this Agreement be hereafter deemed unenforceable or invalid, then the remaining terms shall continue in full force and effect as if the unenforceable or invalid term were missing.

11. The parties agree that this Agreement may be executed in counterparts, and that a facsimile or other transmitted version of the following signatures shall be sufficient to fully bind the respective parties.

IN WITNESS WHEREOF, the counsel of record for the parties in the Kansas litigation have set their hands as of the first date above written:

PENNIE & EDMONDS LLP

By:

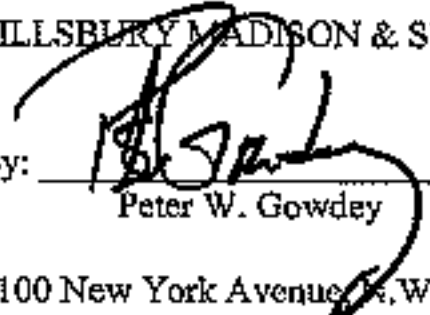
  
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Attorneys for Defendant  
Vornado Air Circulation Systems, Inc.

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

THE HOLMES GROUP, INC.,  
Plaintiff,

vs.

VORNADO AIR CIRCULATION  
SYSTEMS, INC.,

Defendant.

Civil Action No.  
99-1499-WEB

STIPULATION OF  
DISMISSAL WITH PREJUDICE

It is hereby stipulated, pursuant to Fed. R. Civ. P. 41(a)(1)(ii), that all claims, causes of action, or rights to relief pleaded in defendant's Answer and Counterclaim in this action dated December 30, 1999 (the "Answer and Counterclaim"), including without limitation any right to injunctive or monetary relief for the claim of alleged "unfair competition" alleged on page 11 of the Answer and Counterclaim, are hereby dismissed with prejudice, each party to bear its own costs, disbursements, and attorneys' fees.

Dated: May \_\_, 2000

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(316) 269-6481  
Attorneys for Intervenor

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

THE HOLMES GROUP, INC.,

Plaintiff,

vs.

VORNADO AIR CIRCULATION  
SYSTEMS, INC.,

Defendant.

Civil Action No.  
99-1499-WEB

ORDER

This matter having been opened to the Court on the joint motion of plaintiff The Holmes Group, Inc. ("Holmes") and defendant Vornado Air Circulation Systems, Inc. ("Vornado") for an Order dismissing claims on the terms and conditions set forth herein, it is hereby ORDERED, pursuant to Fed. R. Civ. P. 41(a)(2), as follows:

1. Except insofar as they plead a right to the injunctive relief which this Court granted by Order dated January 4, 2000, the plaintiff's Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action are hereby dismissed without prejudice to re-opening upon the motion of any party as provided in paragraph 4 of this Order.
2. All proceedings relating to the counterclaim of defendant Vornado are hereby stayed pending further Order of this Court.

3. In the event that the Final Judgment of this Court on plaintiff's First Cause of Action is affirmed on appeal, then (a) the Preliminary Injunction Order issued by this Court on January 4, 2000, shall become a Permanent Injunction Order, (b) the preliminary injunction bond previously posted by Holmes shall be released and discharged, (c) the dismissal of claims ordered in paragraph 1 of this Order shall become with prejudice; and (d) the counterclaim of Vornado shall be dismissed with prejudice.

4. In the event that the Final Judgment of this Court on plaintiff's First Cause of Action is reversed on appeal, then either party shall have the right to seek reinstatement of all claims conditionally dismissed by this Order upon motion showing any such reversal on appeal.

Dated: May \_\_, 2000

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Wesley E. Brown  
United States District Judge



EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

THE HOLMES GROUP, INC.,

Plaintiff,

vs.

VORNADO AIR CIRCULATION  
SYSTEMS, INC.,

Defendant.

Civil Action No.  
00-40052

ORDER

This matter having been opened to the Court on the parties' joint motion for an Order dismissing claims on the terms and conditions set forth herein, it is hereby ORDERED, pursuant to Fed. R. Civ. P. 41(a)(2), as follows:

1. This action is hereby dismissed without prejudice to re-opening upon the motion of any party as provided in paragraph 3 of this Order.
2. The dismissal of this action shall become with prejudice in the event that the final judgment entered in the case of The Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc., Case No. 99-1499 (WEB) (D. Kan. Mar. 27, 2000), is affirmed on appeal.
3. In the event that the aforesaid final judgment is reversed on appeal, then either party shall have the right to re-open this action upon motion showing any such reversal on appeal.

Dated: May \_\_, 2000

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U.S.D.I.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

THE HOLMES GROUP, INC.,

Plaintiff,

vs.

Civil Action No. 99-1499-WEB

VORNADO AIR CIRCULATION  
SYSTEMS, INC.,

Defendant.

**STIPULATION OF DISMISSAL WITH PREJUDICE**

It is hereby stipulated, pursuant to Fed. R. Civ. P. 41(a)(1)(ii), that all claims, causes of action, or rights to relief pleaded in defendant's Answer and Counterclaim in this action dated December 30, 1999 (the "Answer and Counterclaim"), including without limitation any right to injunctive or monetary relief for the claim of alleged "unfair competition" alleged on page 11 of the Answer and Counterclaim, are hereby dismissed with prejudice, each party to bear its own costs, disbursements, and attorneys' fees.

Dated: May \_\_, 2000

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Attorneys for Intervenor

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

THE HOLMES GROUP, INC.,

Plaintiff,

vs.

Civil Action No. 99-1499-WEB

VORNADO AIR CIRCULATION  
SYSTEMS, INC.,

Defendant.

**STIPULATION OF DISMISSAL WITH PREJUDICE**

It is hereby stipulated, pursuant to Fed. R. Civ. P. 41(a)(1)(ii), that all claims, causes of action, or rights to relief pleaded in defendant's Answer and Counterclaim in this action dated December 30, 1999 (the "Answer and Counterclaim"), including without limitation any right to injunctive or monetary relief for the claim of alleged "unfair competition" alleged on page 11 of the Answer and Counterclaim, are hereby dismissed with prejudice, each party to bear its own costs, disbursements, and attorneys' fees.

Dated: May \_\_, 2000

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**CERTAIN SPIRAL GRILLED PRODUCTS  
INCLUDING DUCTED FANS AND  
COMPONENTS THEREOF**

INV. NO. 337-TA-426

CERTIFICATE OF SERVICE

I, Donna R. Koehnke, hereby certify that the attached Order was served upon Thomas S. Fusco, Esq. and upon the following parties via first class mail, and air mail where necessary, on June 19, \_\_\_\_\_, 2000.



Donna R. Koehnke, Secretary  
U.S. International Trade Commission  
500 E Street, S.W.  
Washington, D.C. 20436

**FOR COMPLAINANT VORNADO AIR CIRCULATION SYSTEMS, INC.:**

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Jeffrey D. Karceski, Esq.  
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**CERTAIN SPIRAL GRILLED PRODUCTS  
INCLUDING DUCTED FANS AND  
COMPONENTS THEREOF**

**INV. NO. 337-TA-426**

**FOR RESPONDENTS HOLMES PRODUCTS CORP., HOLMES PRODUCTS (FAR  
EAST) LTD., AND HOLMES PRODUCTS (FAR EAST) LTD. TAIWAN BRANCH  
(BAHAMAS):**

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Charles S. Stark  
Department of Justice  
Room 3264, Main Justice  
Pennsylvania Avenue & 10th Street, N.W.  
Washington, D.C. 20530

Joanne Stump, Chief  
Intellectual Property Rights Branch  
U.S. Customs Service  
Ronald Regan Building, 3rd Floor  
1300 Penn. Avenue, N.W.  
Washington, D.C. 20229

Richard Lambert, Esq.  
Office of the General Counsel  
National Institute of Health  
9000 Rockville Pike  
Bldg. 31, Room 2B50  
Bethesda, MD 20892-2111

Randy Tritell, Esq.  
Director for International  
Antitrust  
Federal Trade Commission  
Room 380  
Pennsylvania Avenue & 6th Street, N.W.  
Washington, D.C. 20580

OFFICE OF THE SECRETARY



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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WASHINGTON, D.C. 20438

June 19, 2000

Joanne Stump, Chief  
Intellectual Property Rights Branch  
United States Customs Service  
Ronald Reagan Building, 3rd Floor  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20229

Dear Ms. Stump:

A Commission administrative law judge has issued an initial determination ("ID") in Inv. No. 337-TA-426, Certain Spiral Grilled Products Including Ducted Fans and Components Thereof.

A copy of the ID will be provided to you upon request, and written comments may be filed thereon. If you would like to have a copy of the ID, please contact Marilyn R. Abbott, Deputy Secretary at (202) 205-1802.

If you have questions about the investigation, please telephone the Commission advisory attorney Donnette Rimmer, Esq. at (202) 205-0663.

Sincerely,

A handwritten signature in cursive script that reads "Donna R. Koehnke".

Donna R. Koehnke  
Secretary

OFFICE OF THE SECRETARY



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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WASHINGTON, D.C. 20436

June 19, 2000

Charles S. Stark, Esq.  
U. S. Department of Justice  
Antitrust Division.  
Pennsylvania Avenue & 10th Street, N.W.  
Washington, D.C. 20530

Dear Mr. Stark:

A Commission administrative law judge has issued an initial determination ("ID") in Inv. No.337-TA-426, Certain Spiral Grilled Products Including Ducted Fans and Components Thereof.

A copy of the ID will be provided to you upon request, and written comments may be filed thereon. If you would like to have a copy of the ID, please contact Marilyn Abbott, Deputy Secretary, at (202) 205-3105.

If you have questions about the investigation, please telephone the Commission advisory attorney Donnette Rimmer, Esq. at (202) 205-0663.

Sincerely,

A handwritten signature in cursive script that reads "Donna R. Koehnke".

Donna R. Koehnke  
Secretary

OFFICE OF THE SECRETARY



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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WASHINGTON, D.C. 20438

June 19, 2000

Randy Tritell, Esq.  
Director for Int'l Antitrust  
Federal Trade Commission  
Room 380  
Pennsylvania Avenue & 6th Street, N.W.  
Washington, D.C. 20580

Dear Mr. Tritell:

A Commission administrative law judge has issued an initial determination ("ID") in Inv. No. 337-TA-426, Certain Spiral Grilled Products Including Ducted Fans and Components Thereof.

A copy of the ID will be provided to you upon request, and written comments may be filed thereon. If you would like to have a copy of the ID, please contact Marilyn R. Abbott, Deputy Secretary, at (202) 205-1802.

If you have questions about the investigation, please telephone the Commission advisory attorney Donnette Rimmer, Esq. at (202) 205-0663.

Sincerely,

A handwritten signature in cursive script that reads "Donna R. Koehnke".

Donna R. Koehnke  
Secretary

OFFICE OF THE SECRETARY



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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WASHINGTON, D.C. 20436

June 19, 2000

Richard Lambert, Esq.  
Department of Health & Human Services  
Office of General Counsel  
National Institute of Health  
Building 31, Room 2B50  
9000 Rockville Pike  
Bethesda, Maryland 20892-2111

Dear Mr. Lambert:

A Commission administrative law judge has issued an initial determination ("ID") in Inv. No. 337-TA-426, Certain Spiral Grilled Products Including Ducted Fans and Components Thereof.

A copy of the ID will be provided to you upon request, and written comments may be filed thereon. If you would like to have a copy of the ID, please contact Marilyn R. Abbott, Deputy Secretary, at (202) 205-1802.

If you have questions about the investigation, please telephone the Commission advisory attorney Donnette Rimmer, Esq. at (202) 205-0663.

Sincerely,

A handwritten signature in black ink that reads "Donna R. Koehnke". The signature is written in a cursive style.

Donna R. Koehnke  
Secretary