

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60419

FILE: B-185416

DATE: January 23, 1976

MATTER OF: Jockey International, Inc.

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DIGEST:

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Settlement Certificate is sustained where contemporaneous records indicate that Navy received only 288 packages of tee shirts (72 dozen), not 288 dozen claimed since retrieval of additional records to substantiate claim is virtually impossible and claimant has presented no new evidence which clearly and convincingly establishes merits of claim.

Jockey International (Jockey) has appealed the August 5, 1975, settlement of our Transportation and Claims Division (now Claims Division). The Settlement Certificate indicates that on August 6, 1969, pursuant to Purchase Order No. 3338-9219-9731, the sales officer of the USS SHANGRI LA ordered, among other things, 288 packages of tee shirts--three to a package at \$2.38 per package, or \$9.52 per dozen. The Order and Inspection Report of the ordering officer shows that, on August 18, 1969, 288 packages, or 72 dozen shirts, were received at a unit price of \$10.40. On August 27, 1969, Jockey submitted two invoices to the Navy--one for \$3,783.66, and one for \$1,790.70. The latter invoice was, in part, for 72 dozen shirts at \$10.40 per dozen for a total of \$748.80. The former invoice was, in part, for 288 dozen shirts at \$9.52 per dozen, or \$2,741.76.

On May 2, 1975, the Navy paid Jockey the full amount of the \$1,790.70 invoice. Jockey claims that it actually delivered, and the Navy received, goods worth \$3,783.66, plus \$48.30 representing 6 dozen briefs, for which the Navy has no record of receipt, for a total of \$3,831.96. Considering the payment of \$1,790.70, plus an unrelated credit of \$67.50, Jockey claims \$1,973.76 is owed to it by the Navy.

Our Settlement Certificate notes that contemporaneous Navy records indicate receipt only of 288 packages (72 dozen), not the 288 dozen claimed by Jockey. Since the amount of \$1,973.76 represents goods for which the Navy has no records, the claim was disallowed. Furthermore, the Settlement Certificate found an error in the invoice for the 72 dozen shirts received and paid for on May 2, 1975. The invoice was calculated on the basis of

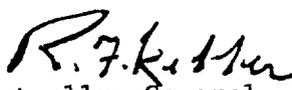
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\$10.40 per dozen, rather than the \$9.52 stipulated in the purchase order, original invoice and inspection report. The correct amount of the billing was \$1,727.34, which represents an overpayment to Jockey of \$63.36. The Settlement Certificate concluded that Jockey was indebted to the Navy in the amount of \$63.36, plus the \$67.50 unrelated credit, or \$130.86.

This appeal is predicated upon the supposition that shipping records, if available, would indicate by weight and/or number of cartons delivered, that 288 dozen shirts were actually delivered and accepted by the Navy, rather than the 288 packages of shirts (72 dozen) shown on the inspection report. Additionally, Jockey has submitted its explanation as to why a partial invoice was submitted in addition to an invoice reflecting the amount it now claims to be due.

Regardless of the reasons Jockey invoiced the Navy as it did, none of the records available provides any information concerning the weight of the shipment or number of cartons. In its October 8, 1975, appeal, Jockey recognizes that the decommissioning of the USS SHANGRI LA has made retrieval of any possible records which might substantiate Jockey's claim virtually impossible.

A claimant must bear the burden of establishing the merits of its claim by clear and convincing evidence. 48 Comp. Gen. 638 (1969). Where any substantial question of law or fact exists, the claim should be denied. 50 Comp. Gen. 434 (1970). Therefore, in the absence of any new evidence, the August 5, 1975, Settlement Certificate is sustained.


Deputy Comptroller General
of the United States