

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN CARBURETORS AND
PRODUCTS CONTAINING SUCH
CARBURETORS

Inv. No. 337-TA-1123

ORDER NO. 19: DENYING MOTION TO TERMINATE THE INVESTIGATION AS TO RESPONDENT CHAMPION POWER EQUIPMENT, INC. BASED ON CONSENT ORDER STIPULATION AND PROPOSED CONSENT ORDER

(September 12, 2018)

On August 23, 2018, Respondent Champion Power Equipment, Inc. (“Champion”) moved (1123-008) to terminate the Investigation as to Champion based on a Consent Order Stipulation and Proposed Consent Order. On September 4, 2018, Complainant Walbro, LLC (“Walbro”) opposed the motion. The Commission Investigative Staff (“Staff”) filed a response opposing the motion. On September 6, 2018, Champion filed amended versions of the Consent Order Stipulation and Proposed Consent Order to address Staff’s concerns.

Champion notes that “[t]he Commission has authority to terminate an investigation as to Champion based upon Champion’s Proposed Consent Order submitted herewith.” (Mem. at 2 (citing 19 U.S.C. § 1337(c).) Champion asserts that the Consent Order Stipulation and Proposed Consent Order comply with the Commission Rules. (*Id.* at 4.) Champion also asserts that “[e]ntering the Proposed Consent Order and terminating the Investigation as to Champion would streamline the Investigation, avoid needless litigation, and conserve the resources of both the parties’ and the Commission, thereby serving the public interest.” (*Id.* at 3.)

Staff asserts that the Consent Order Stipulation “does not appear . . . at this time to comply with all of the requirements of Commission Rule 210.21(c)(3).” (Staff Resp. at 4.) Staff explains

that the Stipulation does not identify all of the claims asserted in the Investigation and instead omits claims 2 and 19 of U.S. Patent No. 6,394,424. (*Id.* at 4-5.) Staff further asserts that the Stipulation does not contain the required admission of all jurisdictional facts. (*Id.* at 6.)

Staff notes that the Proposed Consent Order is also out of compliance with the Rules. (*Id.* at 7-8.) Staff explains that the Proposed Order does not identify all of the asserted claims. (*Id.*) Staff asserts that the Proposed Consent Order “should identify carburetors in addition to products containing such carburetors.” (*Id.* at 8.) Staff further argues that the Proposed Consent Order should specifically include a statement that Champion shall not sell for importation, import, or sell after importation the “Subject Articles” “except under consent, license from Walbro, *or to the extent permitted by a settlement between Walbro and Champion.*” (*Id.* (emphasis added).)

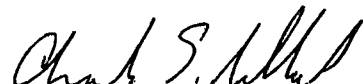
Walbro asserts that the Proposed Consent Order is “improperly restricted.” (Opp. at 5.) Walbro explains that the Proposed Consent Order is “unnecessarily limited to the two products identified in the Complaint.” (*Id.* at 6.) Walbro also asserts that the Proposed Consent Order “fails to even address the disposition of inventory currently awaiting sale in the United States.” (*Id.* at 8.) Walbro explains that the Consent Order Stipulation identifies existing U.S. inventories of infringing products, but exempts them from the Consent Order. (*Id.*) According to Walbro, “Champion’s Consent Order Stipulation makes it plain that Champion wants to sell or otherwise transfer inventory including within the United States.” (*Id.*)

Champion’s amended Consent Order Stipulation and Proposed Consent Order appear to adequately address Staff’s concerns. The undersigned agrees with Walbro, however, that granting the motion to terminate based on the Consent Order Stipulation and Proposed Consent Order would not resolve all issues regarding inventory. Walbro seeks cease and desist orders against the Respondents, including Champion. 83 Fed. Reg. 21,140, 21,160 (May 8, 2018). The Consent Order

Stipulation would allow Champion to dispose of its inventory in the United States by selling it. Such an action is inconsistent with Walbro's requested relief. Accordingly, granting the motion to terminate will not afford Walbro all of the relief to which it would otherwise be entitled. *See Certain Starter Motors & Alternators*, Inv. No. 337-TA-755, Order No. 11, at 2 (Mar. 22, 2011).

For the above stated reasons, Champion's motion (1123-008) is hereby denied.

SO ORDERED.



Charles E. Bullock
Chief Administrative Law Judge

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Certificate of Service – Page 1

I, Lisa R. Barton, hereby certify that the attached **ORDER NO. 19** has been served by hand upon the Commission Investigative Attorney, Vu Bui, Esq., and the following parties as indicated, on **September 12, 2018**.



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street SW, Room 112
Washington, DC 20436

<u>On Behalf of Complainant Walbro, LLC:</u>	
Richard W. Hoffmann, Esq. REISING ETHINGTON, PC 755 W. Big Beaver Rd., Suite Troy, MI 48084	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
<u>RESPONDENTS:</u>	
<u>On Behalf of Respondents HusQvarna Professional Products, Inc. and Lowe's Companies, Inc.:</u>	
Joshua B. Pond, Esq. KILPATRICK TOWNSEND & STOCKTON LLP 607 14 TH Street, NW, Suite 900 Washington, DC 20005	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
<u>On Behalf of Respondent Amazon.com, Inc.:</u>	
Stefani E. Shanberg, Esq. MORRISON & FOERSTER LLP 425 Market Street San Francisco, CA 94105	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
<u>On Behalf of Respondent MTD Products, Inc.:</u>	
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**CERTAIN CARBURETORS AND PRODUCTS
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<p><u>On Behalf of Respondents Techtronic Industries Co. Ltd. d/b/a Techtronic Industries Power Equipment and The Home Depot Inc.:</u></p>	
<p>Sean C. Cunningham, Esq. DLA PIPER LLP (US) 401 B Street, Suite 1700 San Diego, California 92101</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondents Kmart Corporation and Sears, Roebuck and Company:</u></p>	
<p>Eric S. Namrow, Esq. MORGAN, LEWIS & BOCKIUS LLP 1111 Pennsylvania Avenue, NW Washington, DC 20004-2541</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent Ardisam, Inc.:</u></p>	
<p>James B. Coughlan, Esq. PERKINS COIE LLP 700 Thirteenth Street, NW, Suite 600 Washington, DC 20005-3930</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent Zhejiang Ruixing Carburetor Manufacturing Co., Ltd.:</u></p>	
<p>P. Andrew Riley, Esq. MEI & MARK LLP 818 18th Street, NW, Suite 410 Washington, DC 20006</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent Generac Power Systems, Inc.:</u></p>	
<p>Steven M. Auvil, Esq. SQUARE PATTON BOGGS (US) LLP 4900 Key Tower, 127 Public Square Cleveland, Ohio 44114</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent Champion Power Equipment, Inc.:</u></p>	
<p>Benjamin E. Maskell, Esq. MASKELL LAW PLLC 888 N. Quincy St. Suite 701 Arlington, VA 22203</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>

**CERTAIN CARBURETORS AND PRODUCTS
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<p><u>On Behalf of Respondents Buffalo Corporation and Target Corporation:</u></p>	
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<p><u>On Behalf of Respondent Walmart Inc.:</u></p>	
<p>Rett Snotherly, Esq. LEVI & SNOTHERLY, PLLC 1101 Connecticut Avenue, NW, Suite 450 Washington, DC 20036</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent Thunderbay Products:</u></p>	
<p>P. Andrew Riley, Esq. MEI & MARK LLP 818 18th Street NW, Suite 410 Washington, DC 20006</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent Amerisun, Inc.:</u></p>	
<p>Adam D. Swain, Esq. ALSTON & BIRD LLP 950 F Street NW Washington, DC 20004</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent Cabela's Inc. & Fujian Hualong Carburetor Co., Ltd.:</u></p>	
<p>Kecia J. Reynolds, Esq. PHILLSBURY WINTHROP SHAW PITTMAN LLP 1200 Seventeenth St., NW Washington, DC 20036</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent Tractor Supply Company:</u></p>	
<p>Daniel E. Yonan, Esq. STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 New York Avenue, NW Washington, DC 20005</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>

**CERTAIN CARBURETORS AND PRODUCTS
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<p><u>On Behalf of Respondent Northern Tool & Equipment Co., Inc.:</u></p>	
<p>Tyler P. Brimmer, Esq. FAFINSKI MARK & JOHNSON, P.A 775 Prairie Center Drive, Suite 400 Eden Prairie, MN 55344</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent Menards, Inc.:</u></p>	
<p>Jeffrey L. Eichen, Esq. DRINKER BIDDLE & REATH LLP 222 Delaware Avenue, Suite 1410 Wilmington, DE 19801</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent Frictionless World, LLC:</u></p>	
<p>Michael L. Doane, Esq. ADDUCI, MASTRIANI & SCHAUMBERG, LLP 842 w. South Boulder Road, Suite 100 Washington, DC 20036</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent FNA Group, Inc. and MAT Industries, LLC:</u></p>	
<p>Paul M. Bartkowski, Esq. ADDUCI, MASTRIANI & SCHAUMBERG, LLP 1133 Connecticut Avenue, NW, 12th Floor Washington, DC 20036</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent QV Tools Limited Company:</u></p>	
<p>Mark D. Schneider, Esq. DINSMORE & SHOHL 900 Wilshire Drive, Suite 300 Troy, Michigan 48084</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p><u>On Behalf of Respondent Huayi Carburetor Factory:</u></p>	
<p>Jordan L. Coyle, Esq. ORRICK HERRINGTON & SUTCLIFFE, LLP Columbia Center 1152 15th Street, NW Washington, DC 20005</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>

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<p>Funding, Guangda General Machinery Co., Ltd. Tietang Industrial Distict, Fuding City, Fujian Province, 355200 China</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p>Wuyi Henghai Tools Co., Ltd. Baihuashan Industrial Zone Wuyi 321200, Jinhua, Zhejiang China</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p>Fuding Youyi Trade Co., Ltd. No. 176, Yuhu Community, Taimushan Town, Fuding, Ningde, Fujian, 355203 China</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p>Feldmann Eng. & Mfg. Co., Inc. 520 Forest Avenue Sheboygan Falls, WI 53085</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p>Imperial Industrial Supply Co. d/b/a Duromax Power Equipment 5800 Ontario Mills Parkway Ontario, CA 91764</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p>North American Tool Industries 78 Commercial Road Huntington, IN 48750</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p>Tool Tuff Direct LLC 15000 W. 44th Avenue Suite B. Golden, CO 80403</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>
<p>Tillotson Clash Industrial Estate Tralee, Co. Kerry Ireland</p>	<p><input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____</p>