

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**CERTAIN DIMMABLE COMPACT  
FLUORESCENT LAMPS AND  
PRODUCTS CONTAINING SAME**

**Inv. No. 337-TA-830**

**ORDER NO. 8: INITIAL DETERMINATION GRANTING MOTION TO  
TERMINATE INVESTIGATION AS TO RESPONDENT MAXLITE,  
INC. BASED ON CONSENT ORDER STIPULATION AND  
PROPOSED CONSENT ORDER; AND  
ORDER GRANTING MOTION TO STAY**

(July 11, 2012)

On June 15, 2012, respondent MaxLite, Inc. f/k/a SK America, Inc. ("MaxLite"), moved to terminate this Investigation as to MaxLite and for the entry of the Proposed Consent Order.

(Motion Docket No. 830-004.) Further, MaxLite requests that the Investigation be stayed with respect to MaxLite while the motion to terminate is under consideration. (Motion Docket No. 830-004.) On June 25, 2012, complainants Andrzej Bobel and Neptun Light, Inc. file a response in support of the motion and requesting the ALJ recommend specific reporting requirements to account for products currently held in inventory as well as semi-annual reporting of inventory, imports, and sales of dimmable CFLs.

In accordance with Commission Rule 210.21(c), MaxLite entered into a "Stipulation" and a "Consent Order," both attached hereto as Exhibits A and B, respectively. Commission Rule 210.21(c)(3) sets forth certain requirements for the contents of a Stipulation. 19 C.F.R. § 210.21(c)(3). I find that the Stipulation submitted by MaxLite complies with the requirements of Commission Rule 210.21(c)(3).

Specifically, MaxLite agrees that upon entry of the Consent Order, MaxLite will not sell

for importation, import into the United States, or sell or offer for sale in the United States after importation, or knowingly aid, abet, encourage, participate in, or induce importation into the United States, the sale for importation into the United States, or the sale, offer for sale, or use in the United States after importation dimmable CFLs and products containing same that infringe claim 9 of U.S. Patent No. 5,434,480 (“the ’480 patent”) until the expiration, invalidation, and/or unenforceability of the ’480 patent, or until the products at issue are found not to infringe or are licensed by Complainants, their successors or assignees. (Consent Order at ¶ 3; Stipulation at ¶ 4.) MaxLite agrees, pursuant to Commission Rule 210.21(c)(3)(i)(A):

- (1) to an admission of the Commission’s *in rem* jurisdiction over MaxLite’s dimmable CFLs which form the basis of this Investigation, the Commission has *in personam* jurisdiction over MaxLite for purposes of this Consent Order, and the Commission has subject matter jurisdiction in this Investigation (Stipulation at ¶ 3),
- (2) to an express waiver of all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order (Stipulation at ¶ 5),
- (3) to cooperate with and not seek to impede by litigation or other means the Commission’s efforts to gather information under subpart I of the Commission’s Rules of Practice and Procedure, 19 C.F.R. Part 210 (Stipulation at ¶ 6), and
- (4) that the enforcement, modification, or revocation of the Consent Order will be carried out pursuant to subpart I of the Commission’s Rules of Practice and Procedure, 19 C.F.R. Part 210. (Stipulation at ¶ 7).

Because this is an intellectual property-based investigation, the Stipulation also contains a statement, pursuant to Commission Rule 210.21(c)(3)(i)(B), that:

- (1) the Consent Order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable (Stipulation at ¶ 8), and
- (2) MaxLite will not seek to challenge the validity or enforceability of the '480 patent in any administrative or judicial proceeding to enforce the Consent Order (Stipulation at ¶ 9).

In addition to the provisions required by Commission Rule 210.21(c)(3), the Stipulation includes a statement, authorized by Commission Rule 210.21(c)(3)(i)(C), that the signing of the Stipulation does not constitute an admission by MaxLite that an unfair act has been committed or that the '480 patent is valid, enforceable, or infringed by MaxLite. (Stipulation at ¶¶ 10-11.)

Commission Rule 210.50(b)(2) provides that in the case of a proposed termination by settlement agreement or consent order, the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled, with respect to issues relating solely to the public interest. 19 C.F.R. § 210.50(b)(2). In any initial determination terminating an investigation by settlement agreement or consent order, the administrative law judge is directed to consider and make appropriate findings regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers. *Id.* In the moving papers, MaxLite asserts that termination of this Investigation as to MaxLite is in the public interest, which favors the settlement of disputes to avoid needless litigation and to conserve resources. (Mot. at 4.)

MaxLite further asserts entry of the Proposed Consent Order will not impose an undue burden on the public health and welfare, competitive conditions in the United States economy, production of like or directly competitive articles in the United States or United States Consumers. (*Id.*)

Upon review of the pleadings filed in connection with the motion to for termination, I am not aware of any information indicating that termination of this Investigation on the basis of the consent order is contrary to the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. In addition, the termination of the investigation as to MaxLite, such as that proposed by the motion, is generally in the public interest, which favors settlement to avoid needless litigation and to conserve public resources. Therefore, I find that termination of this investigation is in the public interest and does not impose any undue burdens on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers.

As for Complainants' request for reporting requirements to account for products currently held in inventory as well as semi-annual reporting of inventory, imports, and sales of dimmable CFLs, I decline to recommend such a burdensome requirement without evidence suggesting MaxLite will likely violate the consent order. The Commission may, however, impose such a requirement should it deem it necessary to ensure compliance.

Accordingly, it is my Initial Determination that Motion Docket No. 830-004 is hereby GRANTED. This Initial Determination, along with supporting documentation, is hereby certified to the Commission.

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.**

A handwritten signature in cursive script, reading "Thomas B. Pender", written over a horizontal line.

Thomas B. Pender  
Administrative Law Judge

# **Exhibit A**

THE UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C. 20436

Before The Honorable Thomas B. Pender  
Administrative Law Judge

In the Matter of

CERTAIN DIMMABLE COMPACT ) Investigation No. 337-TA-830  
FLUORESCENT LAMPS AND )  
PRODUCTS CONTAINING SAME )

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**CONSENT ORDER STIPULATION OF RESPONDENT MAXLITE, INC.**

WHEREAS, Complainants Neptun Light, Inc. ("Neptun") and Andrzej Bobel (collectively "Complainants") filed a Complaint and an Amended Complaint before the United States International Trade Commission (the "Commission") that allege unfair acts in the importation into, sale for importation into, and sale after importation into the United States of certain dimmable compact fluorescent lamps and products containing same by Respondent MaxLite, Inc. f/k/a SK America, Inc. ("MaxLite") that are alleged to infringe claim 9 of U.S. Patent No. 5,434,480 (the "'480 Patent");

WHEREAS, the Commission instituted this Investigation under Section 337 of the Tariff Act of 1930 as amended (19 U.S.C. § 1337), based upon the allegations contained in the Complaint and Amended Complaint filed by Complainants; and

WHEREAS, MaxLite agrees to the entry of a Consent Order by the Commission in the form attached hereto as **Exhibit A**;

NOW THEREFORE, pursuant to Commission Rule 210.21(c)(i), MaxLite stipulates and agrees as follows in connection with its Motion for Termination of the Investigation based on Consent Order:

- (1) Respondent MaxLite, Inc. f/k/a SK America, Inc. is a New Jersey corporation with its principal place of business at 12 York Avenue, West Caldwell, New Jersey 07006;
- (2) MaxLite stipulates to the entry of a Consent Order in the form attached hereto as **Exhibit A**;
- (3) The Commission has *in rem* jurisdiction over MaxLite's dimmable CFLs which form the basis of this Investigation, the Commission has *in personam* jurisdiction over MaxLite for purposes of this Consent Order, and the Commission has subject matter jurisdiction in this Investigation;
- (4) MaxLite agrees that upon entry of the Consent Order, it will not sell for importation, import into the United States, or sell or offer for sale in the United States after importation, or knowingly aid, abet, encourage, participate in, or induce importation into the United States, the sale for importation into the United States, or the sale, offer for sale, or use in the United States after importation dimmable CFLs and products containing same that infringe claim 9 of the '480 Patent, the only claim at issue against MaxLite, until the expiration, invalidation, and/or unenforceability of the '480 patent, or until the products at issue are found not to infringe or are licensed by Complainants;
- (5) MaxLite expressly waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order;
- (6) MaxLite will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart

I of the Commission's Rules of Practice and Procedures, 19 C.F.R. Part 210;

- (7) Enforcement, modification, or revocation of the Consent Order will be carried out pursuant to subpart I of the Commission's Rules of Practice and Procedures, 19 C.F.R. Part 210;
- (8) The Consent Order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable;
- (9) MaxLite will not seek to challenge the validity or enforceability of the '480 Patent in any administrative or judicial proceeding to enforce the Consent Order;
- (10) The signing of the Consent Order Stipulation does not constitute an admission by MaxLite that the '480 Patent is valid, enforceable, or infringed by MaxLite;
- (11) The signing of the Consent Order Stipulation does not constitute an admission by MaxLite that an unfair act has been committed; and
- (12) There are no agreements, written or oral, express or implied, between the parties concerning the subject matter of this investigation.

**IN WITNESS WHEREOF**, a duly authorized representative of MaxLite has caused this Stipulation to be executed as of the date indicated below.

Respectfully Submitted,

Dated: May 31, 2012

By:



YON SUNG

MaxLite, Inc.

# **Exhibit B**

THE UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C. 20436

Before The Honorable Thomas B. Pender  
Administrative Law Judge

In the Matter of

CERTAIN DIMMABLE COMPACT )                      Investigation No. 337-TA-830  
FLUORESCENT LAMPS AND )  
PRODUCTS CONTAINING SAME )

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**PROPOSED CONSENT ORDER**

The United States International Trade Commission has instituted this Investigation under Section 337 of the Tariff Act of 1930 as amended (19 U.S.C. §1337), based upon the allegations contained in the Complaint filed by Complainant Neptun Light, Inc. (“Neptun”) and Andrzej Bobel (collectively “Complainants”) which allege unfair acts in the sale within the United States after importation of certain dimmable compact fluorescent lamps and products containing same by Respondent MaxLite, Inc. f/k/a SK America, Inc. (“MaxLite”).

MaxLite has executed a Consent Order Stipulation in which it agrees to the entry of this Consent Order and to all waivers and other provisions as required by the Commission’s Rules of Practice and Procedure and has filed a Motion for Termination of this Investigation based upon the Consent Order Stipulation. In particular, MaxLite has stipulated as follows:

- (1) Respondent MaxLite, Inc. is a New Jersey corporation with its principal place of business at 12 York Avenue, West Caldwell, New Jersey 07006;

- (2) The Commission has *in rem* jurisdiction over the dimmable compact fluorescent lamps that form the basis of this Investigation, the Commission has *in personam* jurisdiction over MaxLite for purposes of this Consent Order, and the Commission has subject matter jurisdiction in this Investigation;
- (3) MaxLite agrees that upon entry of the Consent Order, it will not import into the United States or sell or offer for sale in the United States after importation, or knowingly aid, abet, encourage, participate in, or induce importation into the United States, the sale for importation into the United States, or the sale, offer for sale, or use in the United States after importation dimmable compact fluorescent lamps (“dimmable CFLs”) and products containing same that infringe claim 9 of U.S. Patent No. 5,434,480 (the “480 Patent”), the only claim at issue against MaxLite, until the expiration, invalidation, and/or unenforceability of the ‘480 Patent; except under consent or license from Complainants, their successors or assignees;
- (4) MaxLite expressly waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order;
- (5) MaxLite will cooperate with and will not seek to impede by litigation or other means the Commission’s efforts to gather information under subpart I of the Commission’s Rules of Practice and Procedures, 19 C.F.R. Part 210;

- (6) Enforcement, modification, or revocation of the Consent Order will be carried out pursuant to subpart I of the Commission's Rules of Practice and Procedures, 19 C.F.R. Part 210;
- (7) The Consent Order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable;
- (8) MaxLite will not seek to challenge the validity or enforceability of the '480 Patent in any administrative or judicial proceeding to enforce the Consent Order;
- (9) The signing of the Consent Order Stipulation does not constitute an admission by MaxLite that the '480 Patent is valid, enforceable, or infringed by MaxLite;
- (10) The signing of the Consent Order Stipulation does not constitute an admission by MaxLite that an unfair act has been committed; and
- (11) There are no agreements, written or oral, express or implied, between the parties concerning the subject matter of this investigation.

**NOW THEREFORE**, the International Trade Commission issues the following Consent Order:

- (1) Upon Entry of this Consent Order, MaxLite shall not import into the United States or sell or offer for sale in the United States after importation, or knowingly aid, abet, encourage, participate in, or induce importation

into the United States, the sale for importation into the United States, or the sale, offer for sale, or use in the United States after importation of dimmable CFLs and products containing same that infringe claim 9 of the '480 Patent, the only claim of the only patent in issue against Respondent MaxLite, until the expiration, invalidation, and/or unenforceability of the '480 Patent; except under consent or license from Complainants, their successors or assignees.

- (2) MaxLite shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of the Consent Order.
- (3) MaxLite will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules of Practice and Procedures, 19 C.F.R. Part 210.
- (4) MaxLite will not seek to challenge and is precluded from any challenges to the validity or enforceability of the '480 Patent in any administrative or judicial proceeding to enforce the Consent Order.
- (5) When the '480 Patent expires, this Order shall become null and void.
- (6) If any of the claims of the '480 Patent is held to be invalid or unenforceable by a court or agency of competent jurisdiction in a final decision no longer subject to appeal, this Order shall become null and void as to any such invalid or unenforceable claims.

- (7) There are no agreements, written or oral, express or implied, between MaxLite and Complainants concerning the subject matter of this Investigation.
- (8) The entry of this Order does not constitute a determination that the '480 Patent is valid, enforceable, or infringed by MaxLite.
- (9) The entry of this Order does not constitute a determination as to violation of Section 337 by MaxLite.
- (10) This Investigation is hereby terminated with respect to MaxLite, and MaxLite is hereby dismissed as a named Respondent in this Investigation; provided, however, that enforcement, modification or revocation of the Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.

BY ORDER OF THE COMMISSION:

Date:

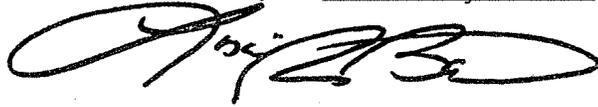
Marilyn R. Abbott  
Secretary

**IN THE MATTER OF CERTAIN DIMMABLE COMPACT  
FLUORESCENT LAMPS AND PRODUCTS CONTAINING SAME**

**337-TA-830**

**CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO 8: INITIAL DETERMINATION** has been served upon the Office of Unfair Import Investigations and the following parties via first class mail and air mail where necessary on July 11, 2012.



Lisa R. Barton, Acting Secretary  
U.S. International Trade Commission  
500 E Street, S.W., Room 112A  
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**FOR COMPLAINANTS ANDRZEJ BOBEL & NEPTUN LIGHT, INC.:**

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**IN THE MATTER OF CERTAIN DIMMABLE COMPACT  
FLUORESCENT LAMPS AND PRODUCTS CONTAINING SAME  
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**337-TA-830**

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**IN THE MATTER OF CERTAIN DIMMABLE COMPACT  
FLUORESCENT LAMPS AND PRODUCTS CONTAINING SAME**

**337-TA-830**

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