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**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436**

In the Matter of

**CERTAIN HAIR IRONS AND
PACKAGING THEREOF**

Investigation No. 337-TA-637

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**COMMISSION OPINION ON REMEDY, THE PUBLIC INTEREST,
AND BONDING**

BACKGROUND

This investigation was instituted by the Commission on March 14, 2008, based on a complaint filed by Farouk Systems, Inc. (“FSI”) of Houston, Texas, alleging a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, as amended, by reason of infringement of U.S. Registered Trademark “CHI”®, listed on the principal register of the United States Patent and Trademark Office as U.S. Trademark Reg. No. 2,660,257 (Dec.10, 2002). *73 Fed. Reg.* 13918-9 (March 14, 2008). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. *Id.* The respondents named in this investigation are: CHI Systems Singapore Pte. Ltd. of Singapore (“CHI Systems”); Princess Silk, LLC (“Princess Silk”) of Lake Forest, California; Kamashi International of Hong Kong, China (“Kamashi”); Mount Rise Ltd. of Dongguan, China (“Mount Rise”); and Dongguan Fumeikang Electrical Technology Co., Ltd. (“Dongguan Fumeikang”) of Dongguan, China. *Id.* Dongguan Fumeikang was terminated from this investigation on the basis of a consent order on June 14,

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2008.¹ Princess Silk was terminated from this investigation on the basis of a consent order on December 22, 2008.²

On November 10, 2008, FSI filed a motion requesting an order directing the remaining respondents, Mount Rise, Kamashi, and CHI Systems, to show cause why they should not be found in default for failure to respond to the complaint and Notice of Investigation. On December 5, 2008, the presiding administrative law judge (“ALJ”) issued Order No. 12, which ordered Mount Rise, Kamashi and CHI Systems to show cause, by December 30, 2008, why they should not be found in default. Mount Rise, Kamashi, and CHI Systems did not respond to Order No. 12 and were found in default by the ALJ in Order No. 13.³

FSI also filed a motion for summary determination on infringement and the economic prong of the domestic industry on November 10, 2009, and requested a general exclusion order. On March 10, 2009, the ALJ issued Order No. 14, an initial determination granting FSI’s motion and finding a violation of section 337. Order No. 14 also contained the ALJ’s recommendations on remedy and bonding (Order No. 14 referred to hereinafter as “ID/RD”). The Commission determined not to review the ALJ’s finding that there has been a violation of section 337 and

¹ See Notice of Commission Decision Not to Review an Initial Determination Terminating the Investigation With Respect to Respondent Dongguan Fumeikang Electrical Technology Co., Ltd. Based on a Consent Order. (June 14, 2008).

² See Notice of Commission Decision Not to Review an Initial Determination of the Administrative Law Judge to Terminate the Investigation As To One Respondent On the Basis of a Consent Order. (December 22, 2008).

³ See Notice of Commission Decision Not to Review an Initial Determination Finding the Remaining Respondents in Default. (February 26, 2009).

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issued a notice requesting briefing on the ALJ's recommended determination and the public interest on April 22, 2009. 74 *Fed. Reg.* 19237 (April 28, 2008). FSI and the Commission investigative attorney ("IA") filed submissions on May 8, 2009. No other submissions were received.

DISCUSSION

I. REMEDY

The Commission's authority to issue a general exclusion in this investigation is found in section 337(d)(2), which provides that:

The authority of the Commission to issue an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that--

- (A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons;
or
- (B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

19 U.S.C. § 1337(d)(2) (2006).

In *Kyocera Wireless Corp. v. Int'l Trade Commission*, 545 F.3d 1340, 1358 (Fed. Cir. 2008), the Federal Circuit emphasized that parties must meet the "heightened requirements of Section 337(d)(2)(A) or (d)(2)(B)" before the ITC has authority to issue a general exclusion order against products of non-respondents. Consistent with the court's direction, the ALJ addressed the statutory requirements for the issuance of a general exclusion order that appear in section 337(d)(2)(B). ID/RD at 27-29. He found a pattern of violation based on the fact that, of the five

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companies named as respondents, two were terminated from the investigation based on consent orders and three were found in default. ID/RD at 27-28. In addition, he found that FSI has filed at least 21 actions in domestic district courts, but that FSI's strategy of filing in the district courts had proven inadequate to stop the sale and importation of infringing hair irons. ID/RD at 27.

The ALJ further found that FSI has employed a company called Strategic Intellectual Property Information ("SIPI") to monitor Internet websites for offers to sell FSI branded irons that are not authorized by FSI. ID/RD at 28. SIPI has reported thousands of offers to sell such products and has sought to shut down numerous web sites or online offers originating in the United States. *Id.* (citing Gulamani Decl. ¶ Exs. 7a and 9 (which include screen captures from eBay)). The ALJ noted that the eBay website reflects efforts by commercial enterprises to sell numerous hair iron products through sophisticated website graphics that display many hair irons and hair iron packages clearly bearing the CHI® mark. *Id.* FSI has been working with eBay to prevent unauthorized use of the CHI® trademark on its website. *Id.* The ALJ found that, despite these efforts, FSI receives numerous complaints each month from consumers and hair care professionals who have purchased hair irons, or have seen Internet offers for the sale of hair irons, that bear the CHI® mark. *Id.* (citing Gulamani Decl ¶ 26; Gulamani Dep. (Staff Ex. 2) Tr. 59-6-, 69-70).

The ALJ also found that it is difficult to identify the source of the infringing products because, by the very nature of the infringement, companies selling hair irons infringing the CHI mark are deliberately misrepresenting their products as those of FSI. ID/RD at 29. In addition, he found that infringers are improperly marking hair irons as to the country of origin to increase

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the confusion as to the source of the infringing products. *Id.* Furthermore, the ALJ noted that these products are distributed over the Internet, a method that lends itself to anonymity and makes it difficult to determine the source of the infringing products. *Id.* Based on these findings, the ALJ found that there is a pattern of violation and that it is difficult to identify the source of infringing goods. Thus, he found that the statutory requirements for a general exclusion order under section 337(d)(2)(B) have been satisfied. ID/RD at 29-30.

We agree with the ALJ that the statutory requirements for the issuance of a general exclusion order under section 337(d)(2)(B) have been met, and we therefore determine that the appropriate remedy in this investigation is a general exclusion order. Our general order excludes from entry certain hair irons and packaging thereof that infringe the CHI® mark.

III. THE PUBLIC INTEREST

In addition to the factors discussed above, the Commission's authority to issue an exclusion order under section 337(d)(2) is conditioned on consideration of the public interest.

Specifically, the Commission must consider:

[T]he effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, and production of like or directly competitive articles in the United States, and United States consumers.

19 U.S.C. § 1337(d)(1). The public interest analysis does not concern whether there is a public interest in issuing a remedial order, but whether issuance of such an order will adversely affect the public interest. *Certain Agricultural Vehicles*, Inv. No. 337-TA-487, Comm'n Op. at 17 (Sept. 2004).

In this case, there is no argument or evidence to suggest that exclusion of the infringing

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hair irons would be contrary to the public interest. Indeed, because this is a trademark case, respondents remain free to import hair irons so long as they do not use the CHI® trademark. Consequently, we find that the public interest factors set out in section 337(d)(1) do not preclude issuance of a general exclusion order.

IV. BOND DURING PERIOD OF PRESIDENTIAL REVIEW

During the period of Presidential review, imported articles otherwise subject to a remedial order are entitled to conditional entry under bond, pursuant to 19 U.S.C. § 1337(j)(3). The amount of the bond is specified by the Commission and must be an amount sufficient to protect the complainant from any injury. 19 C.F.R. § 210.50.

In setting the amount of the bond to be imposed during the period of Presidential review, the Commission often considers the differential in prices between the patented product made by the domestic industry and the lower price of the infringing imported product. ID/RD at 30. When there is insufficient evidence, the Commission's practice is to impose a bond of 100% of the entered value of the accused product. *Id.* (citing *Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Products Containing Same*, Inv. No. 337-TA-372, Comm'n Op. On Remedy, the Public Interest, and Bonding at 15 (May 1996)). In the present investigation, the ALJ found that there is a lack of reliable price information, and a lack of any other information that could be used in the alternative. He further found that this lack of information was due, at least in part, to the failure of Mount Rise, Kamashi and CHI Systems to appear, or participate in the investigation in any way. Consequently, he recommended a bond of 100 percent of the entered value of the infringing goods during the period of Presidential review. ID/RD at 31.

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We agree with the ALJ's analysis and, accordingly, we have set the bond for importation during the period of Presidential review at 100 percent of the entered value of infringing hair irons.

By Order of the Commission.

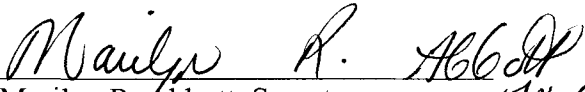
A handwritten signature in black ink, appearing to read "Marilyn R. Abbott". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Marilyn R. Abbott
Secretary to the Commission

Issued: June 20, 2009

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **COMMISSION OPINION** and upon the Commission Investigative Attorney, Aarti Shah, Esq., and the following parties as indicated, on July 20, 2009.


Marilyn R. Abbott, Secretary *JN Ce*
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