

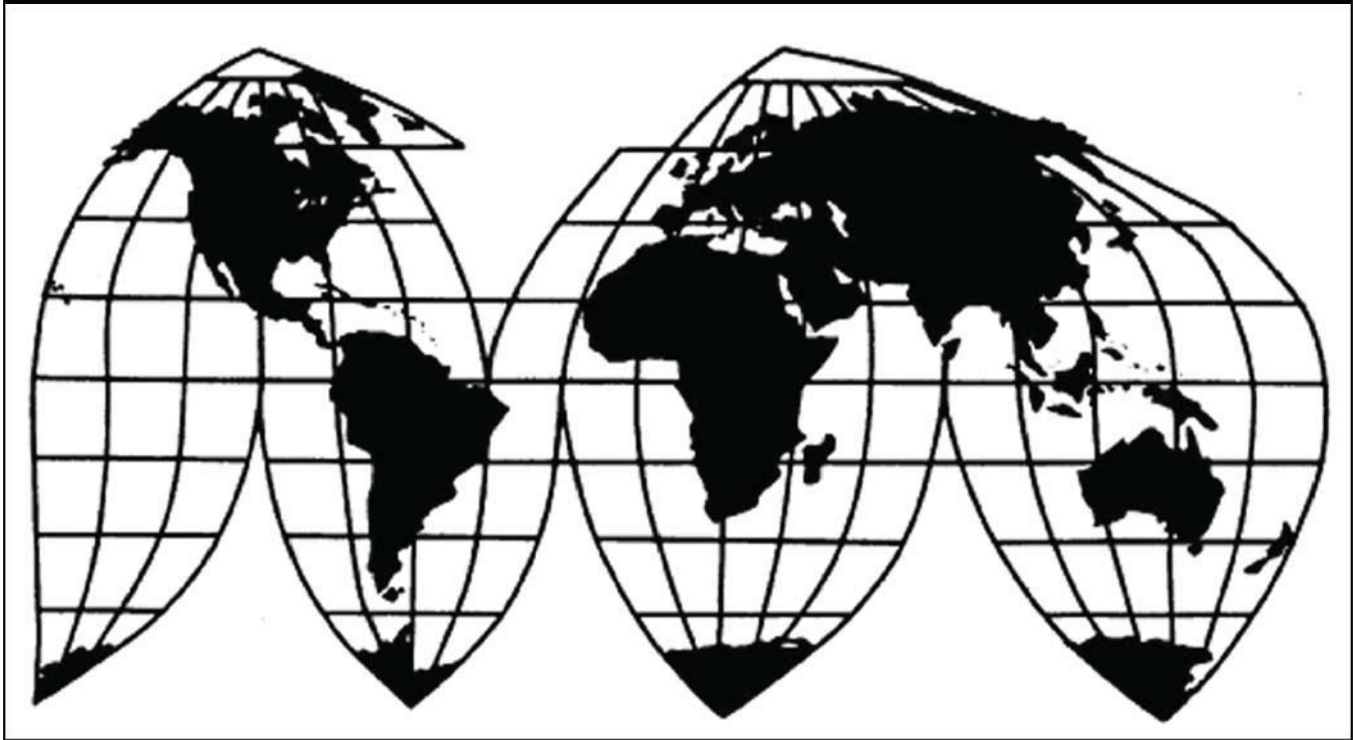
*In the Matter of*  
**Certain Hair Irons and  
Packaging Thereof**

Investigation No. 337-TA-637

Publication 4211

December 2010

**U.S. International Trade Commission**



Washington, DC 20436

# **U.S. International Trade Commission**

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Washington, DC 20436**

# **U.S. International Trade Commission**

Washington, DC 20436  
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***In the Matter of***  
**Certain Hair Irons and  
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Investigation No. 337-TA-637





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

**In the Matter of**

**CERTAIN HAIR IRONS AND  
PACKAGING THEREOF**

**Investigation No. 337-TA-637**

**ISSUANCE OF A GENERAL EXCLUSION ORDER; TERMINATION  
OF THE INVESTIGATION**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion in the above-referenced investigation and terminated the investigation.

**FOR FURTHER INFORMATION CONTACT:** Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3104. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** On March 14, 2008, the Commission instituted this investigation, 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 No. 2,660,257 (CHI®). The respondents named in the notice of investigation are: CHI Systems Singapore Pte. Ltd. (CHI Systems) of Singapore; Princess Silk, LLC ("Princess Silk") of Lake Forest, California; Kamashi International (Kamashi) of Hong Kong; Mount Rise Ltd. (Mount Rise) of Dongguan, China; and Dongguan Fumeikang Electrical Technology Co., Ltd. ("Dongguan Fumeikang") of Dongguan,

China. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. Dongguan Fumeikang and Princess Silk have been terminated from the investigation based on consent orders.

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 ALJ issued Order No. 12, which ordered Mount Rise, Kamashi and CHI Systems to show cause why they should not be found in default. No responses to Order No. 12 were filed. On January 30, 2009, the ALJ issued Order No. 13, an initial determination (“ID”) granting FSI’s motion and finding Mount Rise, Kamashi, and CHI Systems in default in view of their failure to respond to the show cause order. The Commission did not review that ID.

FSI also filed a motion for summary determination of violation by Mount Rise, Kamashi, and CHI Systems on November 10, 2008. These entities were the last remaining respondents, the investigation having been terminated based on consent orders with respect to all other respondents. Pursuant to Commission Rule 210.16(c)(2), 19 C.F.R. § 216(c)(2), FSI declared that it would seek a general exclusion order when it filed its motion for summary determination of violation.

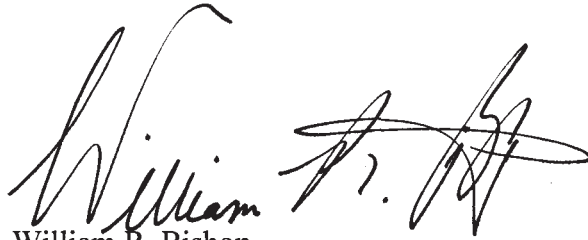
On March 10, 2009, the ALJ issued an ID, Order No. 14, granting FSI’s motion. He also issued his recommended determinations on remedy and bonding (“RD”). The Commission determined not to review Order No. 14, and issued a notice requesting briefing on the ALJ’s RD and the public interest on April 22, 2009. *74 Fed. Reg.* 19237 (April 28, 2008). FSI and the Commission investigative attorney filed submissions on May 8, 2009. No other submissions were received.

Having reviewed the record in this investigation, including the ALJ’s RD and the parties’s written submissions, the Commission has determined that the appropriate form of relief is a general exclusion order prohibiting the unlicensed entry of hair irons that infringe U.S. Registered Trademark No. 2,660,257 (“CHI®”).

The Commission has further determined that the public interest factors enumerated in section 337(d)(1) do not preclude issuance of the general exclusion order. Finally, the Commission has determined that the amount of bond to permit temporary importation during the Presidential review period under 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the value of the hair irons that are subject to the order. The Commission’s order and opinion were delivered to the President and to the United States Trade Representative on their date of issuance.

The authority for the Commission's determination; is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and in sections 210.49-50 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210. 49-50.

By order of the Commission.  
Marilyn R. Abbott, Secretary

A handwritten signature in black ink, appearing to read "William R. Bishop". The signature is fluid and cursive, with a large, sweeping initial "W" and a distinct "B" at the end.

William R. Bishop  
Acting Secretary to the Commission

Issued: June 29, 2009

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

**In the Matter of**

**CERTAIN HAIR IRONS AND  
PACKAGING THEREOF**

**Inv. No. 337-TA-637**

**GENERAL EXCLUSION ORDER**

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) based on the unlawful importation and sale of certain hair irons and packaging for hair irons that infringe United States Trademark Registration No. 2,660,257, to the following mark: CHI®.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing hair irons and packaging thereof.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the general exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.



Accordingly, the Commission hereby **ORDERS** that:

1. Hair irons or packaging for hair irons that infringe U.S. Registered Trademark No. 2,660,257 or any marks confusingly similar thereto are excluded from entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, except under license of the trademark owner or as provided by law, until such date as the trademark is abandoned, canceled, or rendered invalid or unenforceable.

2. The relevant trademark registration is attached to this Order as Exhibit 1.

For the purpose of assisting U.S. Customs and Border Protection in the enforcement of this Order, and without in any way limiting the scope of the Order, the Commission has attached to this Order as Exhibit 2 a copy of photographs provided by the Commission of exemplary Farouk hair irons and hair iron packaging having the protected trademark. The Commission has also attached photographs of articles and packaging that has been found to infringe the trademark as Exhibit 3.

3. Notwithstanding paragraph 1 of this Order, the aforesaid hair irons and hair iron packaging are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100 percent of entered value pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(j)), and the Presidential memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251) from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than 60 days after the date of receipt of this Order. Note, however, this provision

does not exempt infringing articles from seizures under the trademark laws enforced by Customs and Border Protection, most notably 19 U.S.C. § 1526(e) and 19 U.S.C. § 1595a(c)(2)(C) in connection with 15 U.S.C. §1124.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to hair irons or hair iron packaging that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

5. Complainant Farouk Systems, Inc. shall file a written statement with the Commission, made under oath, each year on the anniversary of the issuance of this Order stating whether Farouk continues to use the trademark at issue in commerce in the United States in connection with hair irons, whether the aforesaid trademark has been abandoned, canceled, or rendered invalid or unenforceable, and whether Farouk continues to satisfy the economic requirements of Section 337(a)(2).

6. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

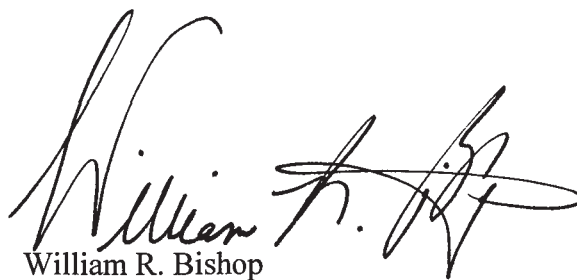
7. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs and Border Protection ("CBP").

8. At the discretion of CBP and pursuant to procedures it establishes, persons seeking to import hair irons or packaging for hair irons that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the

products being imported are not excluded from entry under paragraphs 1 through 7 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

9. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.  
Marilyn R. Abbott, Secretary




William R. Bishop  
Acting Secretary to the Commission

Issued: June 29, 2009

**PUBLIC CERTIFICATE OF SERVICE**

I, Marilyn R. Abbott, hereby certify that the attached **ISSUANCE OF A GENERAL EXCLUSION ORDER; TERMINATION OF THE INVESTIGATION** has been served by hand upon the Commission Investigative Attorney, Aarti Shah, Esq., and the following parties as indicated, on

**JUN 30 2009**

  
Marilyn R. Abbott, Secretary *JRG*  
U.S. International Trade Commission  
500 E Street, SW  
Washington, DC 20436

**ON BEHALF OF COMPLAINANT FAROUK SYSTEMS, INC.:**

Philippe M. Bruno, Esq.  
**GREENBERG TRAUER LLP**  
2101 L Street, NW  
Suite 1000  
Washington, DC 20037  
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- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: \_\_\_\_\_

**PUBLIC VERSION**

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

**In the Matter of**

**CERTAIN HAIR IRONS AND PACKAGING THEREOF**

**Inv. No. 337-TA-637**

**INITIAL DETERMINATION (Order No. 14) Granting Complainant's Motion For  
Summary Determination Concerning The Economic Prong Of The Domestic  
Industry Requirement, And Finding A Violation Of Section 337**

*And*

**RECOMMENDED DETERMINATION On Remedy And Bonding**

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## I. Background

By publication of a notice in the *Federal Register* on March 14, 2008, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended,<sup>1</sup> the Commission instituted this investigation to determine:

[W]hether there is a violation of subsection (a)(1)(C) 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 hair irons and packaging thereof that infringe U.S. Trademark Registration No. 2,660,257, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

73 Fed. Reg. 13918 (2008).

The complainant is Farouk Systems, Inc. (“FSI”) of Houston, Texas. The respondents named in the notice of investigation were: CHI Systems Singapore Pte. Ltd. (“CHI Systems”) of Singapore; Princess Silk, LLC (“Princess Silk”) of Lake Forest, California; Kamashi International (“Kamashi”) of Hong Kong; Mount Rise Ltd. (“Mount Rise”) of Dongguan, China; and Dongguan Fumeikang Electrical Technology Co., Ltd. (“Dongguan Fumeikang”) of Dongguan, China. The Commission Investigative Staff (“Staff”) of the Office of Unfair Import Investigations is also a party in this investigation. *Id.*

Dongguan Fumeikang was terminated from this investigation on the basis of a consent order. *See* Order No. 8 (Initial Determination); Notice of Comm’n Determination Not to Review an Initial Determination Terminating the Investigation with Respect to Respondent Dongguan Fumeikang Electrical Technology Co., Ltd. Based on Consent Order (June 13, 2008). Similarly, Princess Silk was terminated from this investigation on the basis of a consent order. *See* Order

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<sup>1</sup> 19 U.S.C. § 1337(b).

No. 11 (Initial Determination); Notice of Comm'n 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 (Dec. 22, 2008).

Pursuant to 19 U.S.C. § 1337(g)(1) and 19 C.F.R. § 210.16, FSI filed a motion for an order to show cause, and findings of default, against the only respondents remaining in this investigation, *i.e.*, Mount Rise, Kamashi and CHI Systems. (Motion No. 637-9.) FSI argued that Mount Rise, Kamashi and CHI Systems failed to respond to the complaint and notice of investigation, and thus, a show-cause order should issue. *See* FSI Mot. No. 637-9 at 1-3. Further, in accordance with 19 C.F.R. § 210.16(c)(2), the motion declared that FSI would seek a general exclusion order in this investigation,<sup>2</sup> as well as cease and desist orders if they are “appropriate.” *See id.* at 1, 4. None of the respondents in question filed a response to FSI’s motion.<sup>3</sup>

In partial disposition of Motion No. 637-9, the undersigned issued Order No. 12, which required Mount Rise, Kamashi and CHI Systems to file responses by December 30, 2008, showing cause why they should not be found in default. *See* Order No. 12 at 3-4. No response was received to the show-cause order. Thus, in view of their failure to respond to the complaint and notice of investigation, and their failure to respond to the order to show cause, Motion No.

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<sup>2</sup> As discussed in greater detail, *infra*, the Commission’s Rules provide that in any motion requesting the entry of default or the termination of an investigation as to the last remaining respondent, the complainant shall declare whether it seeks a general exclusion order. *See* 19 C.F.R. § 210.16(c)(2).

<sup>3</sup> The Commission’s Rules provide that if a nonmoving party fails to respond to a motion, it may be deemed to have consented to the granting of the relief requested in the motion. *See* 19 C.F.R. § 210.15(c).



637-9 was granted in full, and as required by the Commission's Rules, a finding of default was entered as to Mount Rise, Kamashi and CHI Systems. *See* Order No. 13 (Initial Determination Finding Respondents Mount Rise, Kamashi and CHI Systems In Default); Notice of Commission Decision Not to Review an Initial Determination Finding the Remaining Respondents in Default (Feb. 26, 2009).

FSI has long stated its intention to seek a general exclusion order, even if all respondents were to be terminated from the investigation pursuant to the entry of consent orders or found in default. In that regard, a prehearing conference was held before the undersigned at the Commission, during which this issue was discussed, prior to Mount Rise, Kamashi and CHI Systems being found in default. *See* Order No. 9 (setting prehearing conference); Preh'g Conf. Transcript (served on the Office of the Sec'y, and available on the Commission's Electronic Document Imaging System). Only FSI and the Staff were represented at this prehearing conference; no respondent attended or was represented by counsel.

The governing statute, section 337(g)(2), provides for the possible issuance of a general exclusion order in default cases. It states:

(2) In addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be issued if—

(A) no person appears to contest an investigation concerning a violation of the provisions of this section,

(B) such a violation is established by substantial, reliable, and probative evidence, and

(C) the requirements of subsection (d)(2) of this section are met.<sup>[4]</sup>

19 U.S.C. § 1337(g)(2).

Finally, Commission Rule 210.16(c)(2) implements these statutory provisions. Rule 210.16(c)(2) provides:

(2) In any motion requesting the entry of default or the termination of the investigation with respect to the last remaining respondent in the investigation, the complainant shall declare whether it is seeking a general exclusion order. The Commission may issue a general exclusion order pursuant to section 337(g)(2) of the Tariff Act of 1930, regardless of the source or importer of the articles concerned, provided that a violation of section 337 of the Tariff Act of 1930 is established by substantial, reliable, and probative evidence, and only after considering the aforementioned public interest factors and the requirements of §210.50(c).<sup>[5]</sup>

19 C.F.R. § 210.16(c)(2).

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<sup>4</sup> The subsection of the statute in question, section 337(d)(2), states as follows:

(2) The authority of the Commission to order 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).

This provision is addressed in detail in the Recommended Determination on Remedy and Bonding contained, *infra*, in section III.

<sup>5</sup> Rule 210.50(c) contains the requirements of 19 U.S.C. § 1337(d)(2), quoted *supra* note 4, concerning general exclusion orders. *See* 19 C.F.R. § 210.50(c).

FSI has chosen to seek a general exclusion through its filing entitled, “Motion for Summary Determination on the Economic Prong of the Domestic Industry, Section 337 Violation and Remedy,” which was filed pursuant to 19 C.F.R. § 210.18. (Motion No. 637-7.)<sup>6</sup> FSI correctly identifies the issues of domestic industry and infringement as subject to summary determination. FSI presents additional arguments and evidence concerning remedy in the memorandum accompanying the motion.<sup>7</sup> Specifically, FSI requests that the undersigned recommend that the Commission issue a general exclusion order,<sup>8</sup> and require a 100% bond for

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<sup>6</sup> Accompanying FSI’s motion are: Attachment A (FSI’s Response to the Staff’s Interrogatories to Complainant (Nos. 1-33)); Attachment B (a xerographic representation of an FSI hair iron); Attachment C (xerographic representations of an FSI hair iron box that displays the asserted trademark); the Declaration of Shauky Gulamani [President of FSI] in Support of Farouk’s Motion for Summary Determination of the Economic Prong of the Domestic Industry, Section 337 Violation and Remedy (“Gulamani Decl.”) (which refers to several Exhibits); and the Declaration of Shauky Gulamani in Support of Farouk’s Memorandum of Points and Authorities in Support of Its Motion for Summary Determination with Respect to the Domestic Industry, Section 337 Violation and Remedy (which sponsors and describes the aforementioned Exhibits referred to in the Gulamani Decl.).

Both Gulamani declarations are signed and executed under penalty of perjury. *See* 28 U.S.C. § 1746.

<sup>7</sup> Similarly, in *Certain Hydraulic Excavators and Components Thereof*, Inv. No. 337-TA-582 (“*Excavators*”), an administrative law judge was presented with a motion for summary determination of violation of section 337 as to defaulting respondents, and a request for remedy that included a general exclusion order. In its opinion, the Commission affirmed (on somewhat different grounds) the grant of summary determination as to violation of section 337. *See Excavators*, Comm’n Op. at 3-4, 7, 14 (Jan. 21, 2009). In a separate section of its opinion, and pursuant to different authority, the Commission addressed the question of remedy. *See id.* at 14 (remedy determination made pursuant to 19 U.S.C. § 1337(d) and (f)). As recommended by the judge, the Commission determined to issue a general exclusion order, and cease and desist orders. *Id.* at 15-22.

<sup>8</sup> As noted, *supra*, FSI indicated earlier in this investigation that it might request cease and desist orders. No request for any cease and desist order, however, is contained in Motion No. 637-7.

importations during the period that the Commission’s remedy determination is subject to Presidential review.<sup>9</sup> *See* FSI Mot. at 2; FSI Mem. at 1, 31-32.

The Staff is the only party to file a response to FSI’s motion.<sup>10</sup> The Staff supports the entry of summary determination that a violation of section 337 has occurred. Specifically, the Staff argues that there is no genuine issue of material fact with respect to the validity and infringement of FSI’s asserted registered trademark, or with respect to FSI’s satisfaction of both the technical and economic criteria relevant to the domestic industry requirement. The Staff also argues that the undersigned should recommend that the Commission issue a general exclusion order, and require a 100% bond during the Presidential review period. *See* Staff Resp. at 2, 24.

For the reasons detailed below, the undersigned has determined to grant FSI’s motion insofar as it seeks a summary determination that there has been a violation of section 337, *i.e.*, that the domestic industry requirement has been satisfied, that the accused products are imported, and that FSI’s asserted trademark has been infringed. Further, the undersigned has determined to recommend issuance of a general exclusion order. A 100% bond during the Presidential review period is recommended in connection with any exclusion order that the Commission may issue. The portions of the pending motion that pertain to finding a violation of section 337 are addressed below in section II, in the order presented in FSI’s motion (*i.e.*,

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<sup>9</sup> Section 337 requires that any remedy issued by the Commission be referred to the President for a 60-day review period. Despite the imposition of an order that would otherwise bar importation, the statute provides for importation during the Presidential review period subject to a bond. *See* 19 U.S.C. § 1337(j).

<sup>10</sup> The Staff’s response is supported by seven exhibits, including Exhibit 2, which is a transcript of the deposition, taken by Staff counsel, of Shaukat Gulamani (also referred to as “Shauky Gulamani” therein).

domestic industry, and then infringement). The question of remedy is addressed in the Recommended Determination contained in section III.

## **II. Summary Determination**

### **A. Standards for Summary Determination**

The Commission's Rules provide: "Any party may move with any necessary supporting affidavits for a summary determination in its favor upon all or any part of the issues to be determined in the investigation." 19 C.F.R. § 210.18(a). Any nonmoving party may file opposing affidavits, and the administrative law judge may set the matter for oral argument. 19 C.F.R. § 210.18(b). "The determination sought by the moving party shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law." *Id.*

Further with respect to the showing that must be made in order to obtain a summary determination, the Rules provide:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The administrative law judge may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary determination is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of the opposing party's pleading, but the opposing party's response, by affidavits, answers to interrogatories, or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue of fact for the evidentiary hearing under §210.36(a)(1) or (2). If the opposing

party does not so respond, a summary determination, if appropriate, shall be rendered against the opposing party.

19 C.F.R. § 210.18(c).<sup>11</sup>

As in the case of summary judgment proceedings pursuant to the Federal Rules of Civil Procedure, the evidence is to be viewed in a light most favorable to the nonmovant, and all reasonable inferences must be drawn in favor of the nonmovant. *See Certain Condensers, Parts Thereof and Products Containing the Same, Including Air Conditioners for Automobiles, Inv. No. 337-TA-334, Views of the Comm'n at 3 (Nov. 25, 1992).*

## **B. Domestic Industry**

### **1. Legal Standards for Domestic Industry**

As stated in the notice of investigation, a determination must be made as to whether an industry in the United States exists as required by subsection (a)(2) of section 337. Section 337 declares unlawful, among other things, the importation, the sale for importation or the sale in the United States after importation of articles that infringe a valid and enforceable United States registered trademark only if an industry in the United States, relating to articles protected by the trademark concerned, exists or is in the process of being established. 19 U.S.C. § 1337(a)(2).

The domestic industry requirement consists of both an economic prong (*i.e.*, there must be an industry in the United States) and a technical prong (*i.e.*, that industry must relate to articles

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<sup>11</sup> In certain circumstances, the presiding administrative law judge may refuse an application of summary determination, or may postpone ruling until certain affidavits may be obtained or discovery taken. *See* 19 C.F.R. § 210.18(d).

In certain circumstances, such as when summary determination is not granted as to all relief requested, and thus a hearing is required, the administrative law judge may issue an order establishing facts that are to be deemed established. *See* 19 C.F.R. § 210.18(e).

“An order of summary determination shall constitute an initial determination of the administrative law judge.” 19 C.F.R. § 210.18(f).



protected by the intellectual property at issue). *See Certain Ammonium Octamolybdate Isomers*, Inv. No. 337-TA-477, Comm'n Op. at 55, USITC Pub. 3668 (Jan. 2004). The complainant bears the burden of proving the existence of a domestic industry. *Certain Methods of Making Carbonated Candy Products*, Inv. No. 337-TA-292, Comm'n Op. at 34-35, USITC Pub. 2390 (June 1991). Thus, in this investigation, in which FSI alleges infringement of a registered trademark, FSI must show that it satisfies both the technical and economic prongs of the domestic industry requirement with respect to the asserted trademark.

## 2. Technical Analysis

The asserted trademark in this investigation is "CHI." It is listed on the principal register of the United States Patent and Trademark Office ("PTO") as U.S. Trademark Reg. No. 2,660,257 (Dec. 10, 2002) ("the '257 trademark"). Gulamani Decl. Ex. 1 ('257 trademark registration and assignment).<sup>12</sup>

FSI presents evidence through the declaration of its President, Shaukat Gulamani, that the technical prong has been satisfied.<sup>13</sup> Mr. Gulamani declares that the trademark CHI has been in continuous use in connection with the sale, offer for sale, distribution and advertising in the

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<sup>12</sup> The CHI trademark was assigned to FSI by Global Beauty Network, Inc. on December 18, 2001. *See* Gulamani Decl., ¶¶ 4, 17; Gulamani Decl. Ex. 1 ('257 trademark registration and assignment).

<sup>13</sup> Shaukat Gulamani has been employed by FSI for approximately 10 years. He has served as FSI's President for six years, and served prior to that as the company's Senior Vice President of Sales and Marketing. Gulamani Dep. (Staff Ex. 2) Tr. 5-6. As President of FSI, Mr. Gulamani is familiar with the characteristics of the company's products, and is ultimately responsible for the sale and marketing of FSI hair irons and other products that bear the asserted trademark. Gulamani Decl., ¶ 2. He has also declared that he has personal knowledge of the facts stated in his declaration (which includes financial information concerning the manufacture of FSI hair irons in the United States). *See id.*, ¶1.

United States of hair irons and hair iron packaging since 2002. *See* FSI Mem. at 8 (citing Gulamani Decl., ¶¶ 4, 5, 17). Indeed, referring to the Gulamani declaration and recent samples of its products, FSI sets forth evidence that all FSI hair irons and hair iron packaging prominently feature the CHI® trademark. *See id.*; FSI Mem. Attachs. A and B.<sup>14</sup>

The Staff also presents evidence establishing the technical prong of the domestic industry requirement. It notes that FSI currently manufactures and sells over [ ] models of hair irons in the United States, and that FSI has used the CHI® mark on all its hair irons and hair iron packaging since 2002. *See* Staff Resp. at 5-6 (citing Gulamani Decl., ¶¶ 4, 5; Compl. Phys. Ex. 1). In addition, the Staff also cites evidence that FSI sells approximately [ ] such irons in the United States each month, and has sold over [ ] units in 2007. *See id.* (citing Gulamani Dep. (Staff Ex. 2) Tr. 57; Staff Ex. 4 (“CHI Iron Sales 2007”)).

Accordingly, there is no genuine issue of fact concerning the technical prong of the domestic industry requirement. It is undisputed that the asserted trademark in this investigation is CHI. It is also undisputed that FSI has used the trademark on all its hair irons and hair iron packages since 2002, and that sales of such products total in the millions of units.

### **3. Economic Analysis**

The economic prong of the domestic industry requirement is defined in subsection 337(a)(3) as follows:

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark

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<sup>14</sup> FSI also argues that its extensive use, marketing and advertising promoting the CHI trademark has developed substantial recognition by customers and potential customers of the trademark and its association with FSI hair irons. *See* FSI Mem. at 8.



or mask work concerned –

- (A) significant investment in plant and equipment;
- (B) significant employment of labor or capital; or
- (C) substantial investment in its exploitation, including engineering, research and development, or licensing.

19 U.S.C. § 1337(a)(3).

The economic prong of the domestic industry requirement is satisfied by meeting the criteria of any one of the three factors listed above. Nevertheless, FSI argues that it satisfies the domestic industry requirement under all three factors. *See* FSI Mem. at 8-9. The Staff also argues that the evidence shows that a domestic industry exists under all three factors. *See* Staff Resp. at 7-10. FSI and the Staff are correct. The evidence supporting each of the economic factors of the domestic industry requirement is discussed below.

***significant investment in plant and equipment***

FSI is headquartered on Pennbriht Drive in Houston, Texas, and has a production facility on Fernbush Lane in Houston, Texas (“the Fernbush facility”). Gulamani Decl., ¶¶ 3, 7. Although FSI has used overseas vendors to make hair irons bearing the asserted trademark, it plans to increase its domestic production so that all of its hair irons are made in the United States by the end of [ ]. FSI made an initial investment of [ ]

In 2007, at a cost of an additional [ ] FSI changed the layout of the facility to [ ] as well as offices for a research and development department and an engineering department. This additional construction was completed during [ ] *Id.*, ¶¶ 8, 9. The Fernbush facility now covers approximately

[ ] *Id.*, ¶ 11. In addition, FSI has purchased equipment, parts and components to produce hair irons at the Fernbush facility at a cost of approximately [ ] *Id.*, ¶ 10. To ensure adequate production while its domestic manufacturing ramps up and its foreign manufacturing is phased out, FSI has [

] ¶ 16.

The evidence therefore shows that FSI has made a significant investment in plant and equipment with respect to articles protected by the asserted trademark.

***significant employment of labor or capital***

As detailed above, FSI has already made millions of dollars in capital investment related to the domestic production of its hair irons (all of which bear the asserted trademark). Further, at the time that FSI filed its motion, it had approximately [ ] full-time employees and approximately [ ] part-time employees. At that time, approximately [ ] of the full-time employees worked exclusively on the newly-established hair iron production lines, while [ ] worked exclusively on engineering, and research and development for the subject hair irons.<sup>15</sup> In addition, all of FSI's employees spend some of their time on activities related to the hair irons, such as customer service, warehousing, sales and repairs. *Id.*, ¶¶ 12, 13.

Consequently, the evidence shows that FSI has engaged in significant employment of labor and capital with respect to articles protected by the asserted trademark.

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<sup>15</sup> FSI planned to hire additional labor so that by the end of 2009, a total of [ ] employees would be working exclusively on the production of hair irons bearing the asserted trademark. *See* Gulamani Decl., ¶ 12.

***substantial investment in the exploitation of hair irons bearing the asserted trademark, including engineering, and research and development***

As indicated above, FSI has [ ] employees who work full time on engineering, and research and development related to its hair irons (all of which bear the asserted trademark), as well as other employees who spend part of their time on such activities. From January 2007 until June 2008, FSI spent approximately [ ] on salaries and benefits for employees involved in hair iron research and development, and approximately [ ] for those involved in hair iron engineering. *Id.*, ¶ 13.

In addition, FSI has [ ] with engineering, and research and development related to hair irons. FSI hired [ ] .] At the time that FSI filed its motion, it had already [ ] through 2008 and into 2009. *Id.*, ¶ 14. FSI has also [ ] to develop computer software and electronic heating components for FSI hair irons. At the time that FSI filed its motion, it had already [ ] *Id.*, ¶ 15.

Consequently, the evidence shows that FSI has made a substantial investment in engineering, and research and development related to hair irons protected by the asserted trademark.

#### **4. Conclusion on Domestic Industry**

There is no genuine issue of material fact related to the technical or economic prong of the domestic industry issue. FSI is entitled to a summary determination that it has satisfied the domestic industry requirement of section 337.

#### **C. Importation of Accused Products**

As indicated above, this investigation pertains to the importation into the United States, the sale for importation, or the sale within the United States after importation of certain hair irons and packaging alleged to infringe the '257 trademark. *See* 73 Fed. Reg. 13918 (2008) (notice of investigation). Indeed, a violation of section 337 can occur only with respect to products that are imported or sold for importation. *See* 19 U.S.C. § 1337(a)(1).

FSI accuses hair irons imported and sold by Mount Rise, Kamashi and CHI Systems that bear the CHI mark of infringing the '257 trademark. *See* FSI Mem. at 14-16. The Staff argues that the accused hair irons are imported. Both FSI and the Staff have set forth evidence showing that products of all three respondents in question are imported into the United States. *See id.*; Staff Resp. at 10-11.

Mount Rise, a Chinese company, offers CHI hair irons for sale in the United States. *See* Gulamani Decl., ¶ 20; Gulamani Decl. Ex. 5 (print-outs of screen captures from a Mount Rise Internet web site). Shipping documents accompanying FSI's motion for summary determination evidence Mount Rise's importation of hair irons from China into the United States, including "I-chi," "Elite-chi" and "T-chi" irons. Princess Silk which, as explained above, was a respondent in this investigation prior to being terminated as such on the basis of a consent order, received the Mount Rise hair irons listed in the shipping documents. *See* Gulamani Decl., ¶ 20; Gulamani

Decl. Exs. 3 & 4 (bills of lading).

Kamashi, a company located in Hong Kong, advertises CHI hair iron sales in the United States. *See* Gulamani Decl., ¶ 21; Gulamani Decl. Ex. 7 (eBay Internet web capture) and Ex. 8 (Kamashi Internet web capture). Shipping documents show Kamashi shipments of hair irons from Hong Kong to the United States. *See* Gulamani Decl., ¶ 21; Gulamani Decl. Ex. 6 (bill of lading showing a shipment of hair irons received from Kamashi in Hong Kong to Rabba, Inc., with the port listed as Seattle, Washington).

CHI Systems, a Singapore company, sells accused hair irons in the United States. In fact, FSI has provided direct evidence of the importation and consignment of CHI Systems “CHI Ceramic” irons originating in Singapore to Princess Silk in the United States. *See* Gulamani Decl., ¶19; Gulamani Decl. Ex. 2 (invoice for the purchase of 500 “CHI Ceramic” irons and bill of lading).

Accordingly, there is evidence that respondents import hair irons into the United States. In some cases, the evidence is tied directly to hair irons accused because of their use of the CHI mark. There is no evidence to suggest that any respondent manufactures hair irons in the United States. Indeed, importation is not a contested issue, and there is no genuine issue of material fact concerning the importation by Mount Rise, Kamashi and CHI Systems of accused products. Consequently, it is found that the importation requirement of section 337 is satisfied with respect to the accused products of Mount Rise, Kamashi and CHI Systems.

#### **D. Infringement**

##### **1. Legal Standards for Registered Trademark Infringement**

FSI alleges a violation of section 337 based on infringement of a registered trademark.

Section 337 prohibits several unfair acts, including the following:

The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that infringe a valid and enforceable United States trademark registered under the Trademark Act of 1946.

19 U.S.C. § 1337(a)(1)(c).

With respect to the legal standard for infringement, the Trademark Act of 1946 provides in pertinent part:

- (1) Any person who shall, without the consent of the registrant—
- (a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is ***likely to cause confusion, or to cause mistake, or to deceive***; or
- (b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is ***likely to cause confusion, or to cause mistake, or to deceive***,
- shall be liable in a civil action by the registrant for the remedies hereinafter provided.

15 U.S.C. § 1114(1) (emphasis added).

As summarized by the Commission, “the test for trademark infringement is whether the alleged infringer’s use of the mark is so similar to complainant’s mark as to create a likelihood of confusion among an appreciable number of members of the public as to the source or sponsorship of the product.” *Certain Chemiluminescent Compositions and Components Thereof and Methods of Using, and Products Incorporating, the Same*, Inv. No. 337-TA-285

(“*Chemiluminescent Compositions*”), Comm’n Op. at 4-5, USITC Pub. 2370 (Aug. 17, 1989).

To determine whether there is likelihood of confusion vis-a-vis the asserted trademark and the words or design designated as infringing, the Commission has considered the relevant factors set forth in the Restatement of Torts § 729 (“Restatement factors”), which are as follows:

(a) the degree of similarity between the designation and the trademark or trade name in

(i) appearance;

(ii) pronunciation of the words used;

(iii) verbal translation of the pictures of designed involved;

(iv) suggestion;

(b) the intent of the actor in adopting the designation;

(c) the relation in use and manner of marketing between the goods and services marketed by the actor and those by the other;

(d) the degree of care likely to be exercised by purchasers.

Restatement of Torts § 729 (as quoted in *Chemiluminescent Compositions*, Comm’n Op. at 5-6).

*See also Certain Ink Markers and Packaging Thereof*, Inv. No. 337-TA-522 (“*Ink Markers*”),

Order No. 30 (unreviewed Initial Determination) at 36 (July 25, 2005); Notice of Comm’n

Decision Not to Review an Initial Determination Finding a Violation of Section 337, 70 Fed.

Reg. 54079 (2005).<sup>16</sup>

The Commission has relied on various forms of evidence to establish infringement of a

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<sup>16</sup> Relying on prior Commission decisions, the Staff briefed these factors. The Staff noted, however, that FSI relied on different, yet similar, factors derived from the Restatement (Third) of Unfair Competition. Staff Resp. at 12 n.3. *See also* FSI Mem. at 17-22 (basing its infringement argument on the Restatement (Third) of Unfair Competition §§ 21-23 (1995)).



registered trademark. This evidence has included survey evidence, evidence of actual confusion, and inferences arising comparison of the conflicting marks and the context in which they are used. Indeed, the Commission has undertaken its own analysis of words used on accused products to determine likelihood of confusion. Similarly, an administrative law judge may decide the issue himself, based on the Restatement factors. In making such a determination, however, the judge must not consider whether he is likely to be confused, but rather, whether the reasonable purchaser in the marketplace is likely to be confused.<sup>17</sup> *See Ink Markers*, Order No. 30 (unreviewed Initial Determination) at 37 (citing, *inter alia*, *Chemiluminescent Compositions*, Comm'n Op., 1991 WL 790083, at 7-8).

## **2. Infringement Analysis**

### **a. validity and enforceability**

As indicated above, the '257 trademark was assigned to FSI and is listed on the principal register of the PTO. The listing of a trademark on the principal register is *prima facie* evidence of its validity, the registrant's ownership of the mark, and the registrant's exclusive right to use the registered mark in commerce on, or connection with, the goods or services specified in the registration. *See* 15 U.S.C. § 1115(a).

No party has challenged the validity or enforceability of the '257 trademark. FSI and the Staff rely on the statutory provision quoted above, and cite to the assignment and registration

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<sup>17</sup> Certain courts have cautioned that while a fact-finder can conduct his own visual examination, such an examination should not constitute the sole basis for the conclusions made. *See Ink Markers*, Order No. 30 (unreviewed Initial Determination) at 37 (citing *Tools USA and Equip. Co. v. Champ Frame Straightening Equip., Inc.*, 87 F.3d 654, 660 (4th Cir. 1996); *Woodsmith Publ'g Co. v. Meredith Corp.*, 904 F.2d 1244, 1249-50 (8th Cir. 1990)).



documents to argue that the asserted trademark is valid and enforceable. Indeed, there is no evidence of record to the contrary.

Consequently, it is found that the asserted trademark is valid and enforceable.

***b. likelihood of confusion***

As discussed below, based on the Restatement factors, the evidence shows that there is a high degree of likelihood of confusion as to the source of the accused products.<sup>18</sup>

***The Restatement Factors***

***similarity of the marks***

FSI supplied xerographic representations of accused hair irons in both its complaint and in connection with its pending motion, as well as xerographic copies of print-outs made of Internet web pages.<sup>19</sup> Many of the images on these documents are dark, with little contrast,

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<sup>18</sup> Indeed, the evidence provided by FSI and the Staff shows that many times each month, ordinary consumers (and in some cases, trained hair care professionals and FSI-authorized dealers) deliver to FSI, or otherwise contact FSI about, defective products that bear unauthorized CHI marks. *See* Gulamani Decl., ¶ 26; Gulamani Dep. (Staff Ex. 2) Tr. 69-70; Staff Ex. 3 (Counterfeit Iron Returns 2008), Ex. 6 (email correspondence), Ex. 7 (correspondence). In fact, FSI has purchased over the Internet through eBay, hair irons sold as “CHI” hair irons. *See* Gulamani Decl., ¶ 22 (citing Gulamani Decl. Ex. 9 (eBay web captures and UPS labels)). While such evidence indicates unauthorized use of the CHI trademark on products made by companies other than FSI (in addition to showing actual confusion as to the source of the accused products), and is relevant to the question of remedy, *see infra*, the parties’ briefs do not specifically tie the evidence to products made or sold by Mount Rise, Kamashi or CHI Systems.

<sup>19</sup> A genuine FSI hair iron and box were submitted with the complaint as Complaint Physical Exhibit 1. An alleged “counterfeit” hair iron and package were supplied as a physical exhibit to the complaint, identified as Complaint Physical Exhibit 2. The hair iron and packaging that constitute the alleged “counterfeit” exhibit bear the CHI mark, and mention “Farouk” Indeed, in all outward respects (including shape, size and labeling of the box) the “counterfeit” box is nearly identical to the genuine FSI box. A slight lack of definition in the photograph of a hair iron is a noticeable difference when a side-by-side comparison is made of the genuine and “counterfeit” boxes, which suggests that the “counterfeit” label is merely a color photographic or  
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particularly on the copies supplied to the undersigned. Nevertheless, as detailed below, it is possible to discern the CHI trademark on certain documents relating to respondents, and to read lines of text on the documents.

From xerographic representations supplied with the Gulamani Declaration and the complaint, it is evident that Mount Rise uses the CHI mark, with letters that are identical to those of the asserted trademark. The mark appears on a website for advertising hair irons, and at least on Mount Rise hair iron packaging. *See* Gulamani Decl. Ex. 5 (Internet web captures); *see also* Compl. Ex. 6 (representations of Mount Rise irons and packaging).

From xerographic representations supplied with the Gulamani Declaration, it is evident that Kamashi uses the CHI mark, with letters that are identical to those of the asserted trademark. The mark appears on the Kamashi website for advertising hair irons, and at least on Kamashi hair iron packaging. *See* Gulamani Decl. Ex. 6; *see also* Compl. Ex. 5 (representations of Kamashi irons and packaging).

From xerographic representations supplied with the complaint, it is evident that CHI Systems uses the CHI mark, with letters that are identical to those of the asserted trademark, on a CHI Systems website used for advertising hair irons, and at least on CHI Systems hair iron packaging. *See* Compl. Ex. 2 (representations of CHI Systems irons and packaging, and CHI Systems website captures).

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<sup>19</sup>(...continued)

xerographic copy of the genuine FSI label. *Compare* Compl. Ex 1 (FSI hair iron and box) *with* Compl. Phys. Ex. 2 (labeled “counterfeit”). Both FSI and the Staff refer to Complaint Physical Exhibit 2 in their briefs. It is not, however, clear whether the contents of that exhibit are alleged to originate with one of the defaulting respondents (*i.e.*, Mount Rise, Kamashi or CHI Systems). *See* FSI Mem. at 18; Staff Resp. at 14; Compl., “Exhibit List”; Letter to Comm’n Sec’y (transmitting the complaint) dated Feb. 12, 2008 (referring to physical exhibits).

*intent of the actor*

As indicated above, the CHI marks used by respondents are identical to the '257 trademark. No reason is apparent for the actions other than to cause confusion. Moreover, exhibits purporting to show the advertising and packaging of respondents' use FSI's "Farouk," "Farouk Systems, USA," or "Farouk USA" names, which demonstrates an intention to create confusion as to the actual origin of the accused hair irons and, or packaging bearing the asserted FSI trademark. *See* Gulamani Decl. Ex. 5 (purported Mount Rise packaging bearing the "Farouk" name); Gulamani Decl. Ex. 7 (purported Kamashi packaging with the "Farouk" name); Compl. Ex. 4 (CHI Systems advertising mentioning both its name and that of "Farouk Systems, USA"). Thus, it is found that respondents have portrayed their products as CHI products in order to mislead purchasers.

*similarity of manner of marketing*

It is admitted that FSI and respondents use different manners of marketing, as well as distribution channels. Respondents are known to use online auctions and Internet advertising to sell their products, while FSI uses a network of authorized salons and stylists. *See* FSI Mem. at 19. Nevertheless, there is no evidence that this difference in marketing and distribution prevents confusion as to the origin of respondents' products. Indeed, FSI's President testified to, and provided correspondence documenting, numerous instances in which consumers have mistakenly contacted FSI about non-FSI hair irons, as well as authorized dealers who were concerned that FSI might be offering discount hair irons via the Internet. *See* Gulamani Dep. (Staff Ex. 2) Tr. 57-60, 69-70; Ex. 6 (email correspondence), Ex. 7 (correspondence); *see also* Gulamani Decl., ¶ 26 ("FSI receives calls and emails from customers on a daily basis regarding the

authenticity of the hair irons they have purchased.” \* \* \* “Many hair irons returned to FSI are determined to be counterfeit ones.”).

*degree of care*

While many FSI hair irons are used in salons, the bulk of FSI hair irons that bear the asserted trademark are used by consumers at home. FSI does not believe that consumers have the knowledge and exercise the care required to distinguish genuine FSI products from those using the asserted mark in an unauthorized manner. *See* Gulamani Decl., ¶ 25, 26. As discussed above, FSI has had many contacts with consumers, and even salon professionals, who were confused about the origin of hair irons bearing the CHI mark.

**3. Conclusion on Infringement**

There is no genuine issue of material fact concerning FSI’s allegations of infringement of the ‘257 trademark by the accused products of Mount Rise, Kamashi and CHI Systems. The evidence offered in support of the pending motion supports a conclusion that there is a high degree of likelihood of confusion between FSI’s products and those of Mount Rise, Kamashi and CHI Systems. No contrary evidence has been offered.

Accordingly, it is found that the accused products of Mount Rise, Kamashi and CHI Systems infringe the asserted ‘257 trademark.

**E. Summary Determination of Violation of Section 337**

For the reasons stated above, there is no genuine issue of material fact relating to any element of a section 337 violation, and FSI is entitled to a summary determination as a matter of law. Therefore, it is the INITIAL DETERMINATION of the undersigned that Motion No. 637-7 for summary determination of violation is GRANTED.

The portion of FSI's filing that requests a recommendation on remedy and bonding is addressed below in a separate section.

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 contained herein.

### **III. Recommended Determination on Remedy and Bonding**

When a violation of section 337 has been found, the Commission must consider the issues of remedy, the public interest and bonding. *See Excavators*, Comm'n Op. at 14 (citing 19 U.S.C. § 1337 (d) and (f)). The administrative law judge is to make a recommendation to the Commission concerning remedy and bonding, but shall not address the issue of the public interest unless ordered by the Commission to do so. *See* 19 C.F.R. §§ 210.42, 210.50(b)(1).<sup>20</sup>

#### **A. The Question of a General Exclusion Order**

The Commission has broad discretion in selecting the form, scope, and extent of the remedy in a section 337 proceeding. *Viscofan, S.A. v. United States Int'l Trade Comm'n*, 787 F.2d 544, 548 (Fed. Cir. 1986). A limited exclusion order directed to respondents' infringing products is among the remedies that the Commission may impose. In lieu of a limited exclusion order, the Commission may, in appropriate circumstances, issue a general exclusion

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<sup>20</sup> Evidence and argument concerning the public interest may be heard by the administrative law judge, even when no recommendation will be rendered thereof. *See* 19 C.F.R. § 210.50(b)(1). In this instance, FSI has included in its brief a section on the public interest. *See* FSI Mem. at 30-31. Yet, inasmuch as the Commission has not ordered the undersigned to make a recommendation concerning the public interest, the issue is not addressed herein.

order that applies to all infringing products, regardless of their manufacturer, if such an order “is necessary to prevent circumvention of an exclusion order limited to products or named persons; *or* there is a pattern of violation *and* it is difficult to identify the source of the infringing products.” *See* 19 U.S.C. § 1337(d) (emphasis added).

The Commission’s determination of whether to issue a general exclusion order has been guided in the past by a two-part test set forth in its opinion in *Certain Airless Paint Spray Pumps and Components Thereof*, Inv. No. 337-TA-90 (“*Spray Pumps*”), USITC Pub. 1199 at 18-19, 216 U.S.P.Q. 465 (Nov. 1981).<sup>21</sup> *See* *Certain Tadalafil or Any Salt or Solvate Thereof and Prods. Containing Same*, Inv. No. 337-TA-539, Comm’n Op., 2008 ITC LEXIS 744 at \*4 (May 2008) (applying the *Spray Pumps* test even after the statute was amended in 1994 specifically to authorize the issuance of general exclusion orders).

Under *Spray Pumps*, a determination is made as to whether a complainant has proven “both a widespread pattern of unauthorized use” and other “business conditions from which one might reasonably infer that foreign manufacturers other than the respondents to the investigation may attempt to enter the U.S. market with infringing articles.” *See* *Spray Pumps*, 216 U.S.P.Q. at 473.<sup>22</sup>

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<sup>21</sup> In *Spray Pumps*, the Commission identified factors as to which evidence might be presented to prove the “widespread pattern of unauthorized use.” Those factors are: (1) a Commission determination of unauthorized importation into the United States of infringing articles by numerous foreign manufacturers; (2) the pendency of foreign infringement suits based upon foreign patents which correspond to the domestic patent in issue; and (3) other evidence which demonstrates a history of unauthorized foreign use of the patented invention. *Spray Pumps*, 216 U.S.P.Q. at 473.

<sup>22</sup> In *Spray Pumps*, the Commission identified factors as to which evidence might be presented to prove the “business conditions.” Those factors are: (1) an established demand for  
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While the *Spray Pumps* factors may be considered, they cannot be viewed as “imposing additional requirements beyond those identified in Section 337(d)(2).” *Excavators*, Comm’n Op. at 17-19. Indeed, the *Spray Pumps* factors played no apparent role in a recent Commission decision to issue a general exclusion order. Notwithstanding the prior analysis of an administrative law judge according to the *Spray Pumps* factors, in *Excavators* the Commission analyzed the evidence (offered in connection with a motion for summary determination) strictly under the test set forth in section 337(d)(2)(B) (quoted above). *See id.* at 17-19. Thus, while FSI and the Staff set forth evidence according to the *Spray Pumps* factors,<sup>23</sup> that evidence is analyzed herein so as not to impose additional requirements beyond those identified in section 337(d)(2).

FSI requests that the undersigned recommend the issuance of a general exclusion order. *See* FSI Mem. at 22-30. The Staff supports FSI’s request. *See* Staff Resp. at 17-23.

FSI’s request for a general exclusion order is made in connection with a motion for summary determination against defaulting respondents, rather than following a full evidentiary hearing. “The Commission’s authority to issue a general exclusion order in a default case such as this one is found in Section 337(g)(2), which provides that the Commission may issue a general exclusion order when no one appears to contest the allegation of violation, a violation is established by substantial, reliable, and probative evidence, and the requirements of Section

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<sup>22</sup>(...continued)

the patented article in the U.S. market and conditions of the world market; (2) the availability of marketing and distribution networks in the United States for potential foreign manufacturers; (3) the cost to foreign entrepreneurs of building a facility capable of producing the patented article; (4) the number of foreign manufacturers whose facilities could be retooled to produce the patented article; or (5) the cost to foreign manufacturers of retooling their facility to produce the patented articles. *Spray Pumps*, 216 U.S.P.Q. at 473.

<sup>23</sup> *See* FSI Mem. at 24-30; Staff Resp. at 21-23.

337(d)(2) have been met.” *Excavators*, Comm’n Op. at 16. As detailed above in section II (Summary Determination), the motion for summary determination of violation was not granted merely in the absence of an opposing respondent. Rather, the Staff played an active role in connection with the motion. The evidence filed by FSI and the Staff included documentary evidence and deposition testimony. FSI and, or, the Staff provided evidence as to each element of the alleged section 337 violation, including the existence of the requisite domestic industry. Thus, the finding of violation was based on substantial, reliable, and probative evidence. Consequently, the statutory prerequisite is met, and the analysis under section 337(d)(2) may proceed.

As discussed below, the evidence shows that there is a pattern of violation of section 337, and it is difficult to identify the source of the infringing products. Thus, pursuant to section 337(d)(2), a general exclusion order should issue.

A pattern of violation is evident, in part, by the fact that five companies were named as respondents in this investigation. While two respondents were terminated from the investigation of the basis of consent orders, three have been found herein to have violated section 337. This investigation has also taken place in the context of numerous cases filed by FSI in domestic courts.<sup>24</sup> FSI’s strategy of litigation in the courts has proven inadequate to stop the sale and importation of infringing hair irons. In the face of a growing number of Internet web sites offering sales of infringing hair irons to United States consumers, FSI has sought relief at the Commission. *See Gulamani Decl.*, ¶ 29.

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<sup>24</sup> FSI has filed at least 21 actions in domestic courts. It appears that FSI has prevailed in some of these actions, although the details and precise number of infringement findings are unclear from the evidence provided by FSI. *See Gulamani Decl.*, ¶ 29.



FSI has employed [ ] to monitor Internet web sites for offers to sell FSI branded hair irons, none of which could pertain to the sale of authorized FSI products. [ ] has reported thousands of offers to sell such products, and has sought to have shut down numerous web sites or online offers originating in the United States and foreign countries. *See* Gulamani Decl., ¶ 23 (FSI's distribution is through authorized salons and stylists), ¶ 28 (citing Gulamani Decl. Exs. 11A - 11D [ ]).

In addition, FSI has been working directly with eBay to prevent unauthorized use of the asserted trademark on product offerings made via the Internet. *See* Gulamani Decl., ¶ 27 (citing Gulamani Decl. Ex. 10 (2008 email correspondence between FSI and eBay)). Yet, FSI has purchased through eBay non-FSI hair irons sold as "CHI" hair irons. *See* Gulamani Decl., ¶ 22 (citing Gulamani Decl. Ex. 9 (eBay web captures and UPS labels)). Indeed, web captures provided by FSI of offers for sale made on eBay show offers that were not made by a single person of a single second-hand hair iron. Rather, the eBay pages reflect the efforts of a commercial enterprise to sell numerous hair iron products through sophisticated web site graphics that display many hair irons and hair iron packages that clearly display the CHI mark. *See* Gulamani Decl. Exs. 7 and 9 (which include screen captures from eBay).

Despite FSI's efforts, it 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. *See* Gulamani Decl. ¶ 26; Gulamani Dep. (Staff Ex. 2) Tr. 59-60, 69-70.

In view of these facts, it is found that the evidence shows a pattern of infringement.

Further, the evidence also shows that it is difficult to identify the source of infringing

products. By the very nature of the infringement at issue, companies selling hair irons bearing the CHI trademark are purposefully misrepresenting their products as those of FSI. *See* section II.D.2 (infringement analysis). As discussed above, often the CHI mark is also used in conjunction with a false identification of the “Farouk” or “Farouk Systems, USA” name. Gulamani Decl. Ex. 7 (packaging with the “Farouk” name); Compl. Ex. 4 (“Farouk Systems, USA”). There have even been instances of competitors improperly marking their products as to county of origin in an apparent attempt to increase the confusion as to source, as well as using genuine FSI packages (that may once have been in the legitimate stream of commerce) to obscure the origins of non-FSI hair irons contained in the boxes. *See* Gulamani Dep. (Staff Ex. 2) Tr. 67-70.

By using the Internet for many sales of hair irons bearing the asserted trademark, infringers have chosen a means of distribution that lends itself to anonymity, and thus it is difficult to ascertain the source of the products.<sup>25</sup> *See* Gulamani Decl., ¶¶ 27-29. As detailed above, there is in fact widespread confusion about the source of infringing products, as FSI is continuously responding to complaints from consumers and professionals who believe that hair irons or hair iron packaging bearing unauthorized CHI marks originated with FSI.

Accordingly, it is found that there is a pattern of violation, and it is difficult to identify the source of infringing goods. Thus, the statutory requirements for a general exclusion under

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<sup>25</sup> The manufacture of a hair iron requires little specialized equipment. *See* Gulamani Decl., ¶ 33. In addition, the evidence discussed, *supra* in this section, shows that companies located in the United States and overseas readily offer hair irons bearing the CHI mark via the Internet, including sponsored web sites such as eBay. Further, a high volume of such offers for sale has already been detected by FSI and [ ]. Thus, it is reasonable to infer that foreign manufacturers other than the respondents in this investigation may attempt to enter the domestic market with infringing articles. *See Spray Pumps*, 216 U.S.P.Q. at 473.

section 337(d)(2)(B) have been satisfied.

### **B. The Question of Bond**

The administrative law judge and the Commission must determine the amount of bond to be required of a respondent, pursuant to section 337(j)(3), during the 60-day Presidential review period following the issuance of permanent relief, in the event that the Commission determines to issue a remedy. The purpose of the bond is to protect the complainant from any injury.

19 C.F.R. § 210.42(a)(1)(ii), § 210.50(a)(3).

When reliable price information is available, the Commission has often set the bond by eliminating the differential between the domestic product and the imported, infringing product. *See Certain Microsphere Adhesives, Processes for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 24 (1995). In other cases, the Commission has turned to alternative approaches, especially when the level of a reasonable royalty rate could be ascertained. *See Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm'n Op. at 41 (1995). A 100 percent bond has been required when no effective alternative existed. *See Certain Flash Memory Circuits and Products Containing Same*, Inv. No. 337-TA-382, USITC Pub. 3046, Comm'n Op. at 26-27 (July 1997) (a 100% bond imposed when price comparison was not practical because the parties sold products at different levels of commerce, and the proposed royalty rate appeared to be *de minimis* and without adequate support in the record); *cf. Excavators*, Comm'n Op. at 21 (lack of sufficiently reliable price information; a 100% bond imposed to protect complainant from any injury during the Presidential review period).

Both FSI and the Staff seek a 100 percent bond. *See* FSI Mem. at 31; Staff Resp. at 24-25.

In this case, there is a lack of reliable price information, and a lack of any other information that could be used in the alternative. This lack of information is due at least in part to the failure of Mount Rise, Kamashi and CHI Systems to appear, or in any way to participate in, this investigation.

Consequently, it is recommended that the bond for importation during the Presidential review period be set at 100 percent of entered value.

### **C. Conclusion on Remedy**

For the reasons stated above, it is recommended that the Commission issue a general exclusion order. It is also recommended that the bond for importation during the Presidential review period be set at 100 percent.

## **IV. Summary and Order**

As indicated above, FSI's Motion No. 637-7 for summary determination of violation of section 337 has been granted by initial determination. *See* section II E (Summary Determination of Violation of Section 337). In addition, it has been recommended that the Commission issue a general exclusion order. A 100 percent bond has been recommended for importations during the Presidential review period. *See* section III C (Conclusion on Remedy).

All issues delegated to the administrative law judge, pursuant to the notice of investigation, have been decided, with dispositions as to all respondents. Accordingly, this investigation before the undersigned has concluded in its entirety.

Within seven days of the date of this document, each party shall submit to the

office of the undersigned a statement as to whether or not it seeks to have any portion of the document redacted from the public version. The parties' submissions may be made by facsimile and, or, by hard copy. Any party seeking to have a portion of this document redacted from the public version must submit to this office a copy of this document with red brackets indicating the portion, or portions, asserted to contain confidential business information.

**So Ordered.**

*Carl C. Charneski*


Carl C. Charneski  
Administrative Law Judge

Issued: March 10, 2009

**PUBLIC CERTIFICATE OF SERVICE**

I, Marilyn R. Abbott, hereby certify that the attached **INITIAL DETERMINATION** has been served by hand upon the Commission Investigative Attorney, Aarti Shah, Esq., and the following parties as indicated, on

**NOV 19 2010**

  
Marilyn R. Abbott, Secretary *JNB*  
U.S. International Trade Commission  
500 E Street, SW, Room 112A  
Washington, D.C. 20436

**FOR COMPLAINANT FAROUK  
SYSTEM, INC.:**

Philippe M. Bruno, Esq.  
**GREENBERG TRAUIG, LLP**  
2101 L St., N.W.  
Suite 1000  
Washington, D.C. 20037

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN HAIR IRONS AND PACKAGING THEREOF**

**Inv. No. 337-TA-637**

**RESPONDENTS:**

CHI Systems Singapore Pte. Ltd.  
26 Jalan Raya  
Singapore 368574

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

Kamashi International  
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Central, Western  
Hong Kong 852

Via Hand Delivery  
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Mount Rise Ltd.  
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Baidi Industrial Zone  
Zhangmutou Town  
Dongguan  
China

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

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**PUBLIC**

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

**In the Matter of**

**CERTAIN HAIR IRONS AND  
PACKAGING THEREOF**

**Investigation No. 337-TA-637**

**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,

## PUBLIC

2008.<sup>1</sup> Princess Silk was terminated from this investigation on the basis of a consent order on December 22, 2008.<sup>2</sup>

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.<sup>3</sup>

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

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<sup>1</sup> 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).

<sup>2</sup> 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).

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

## PUBLIC

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

## PUBLIC

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

## PUBLIC

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.

**PUBLIC**

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.

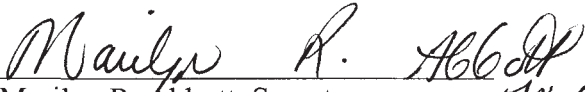
Marilyn R. Abbott  
Secretary to the Commission

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 C*  
U.S. International Trade Commission  
500 E Street, SW  
Washington, DC 20436

**ON BEHALF OF COMPLAINANT FAROUK  
SYSTEMS, INC.:**

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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**

**NOTICE OF COMMISSION DECISION NOT TO REVIEW  
AN INITIAL DETERMINATION; SCHEDULE FOR  
SUBMISSIONS: EXTENSION OF TARGET DATE**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review a final initial determination ("ID") (Order No. 14) issued by the presiding administrative law judge ("ALJ") finding a violation of Section 337. The Commission has extended the target date for completion of this investigation by 17 days, *i.e.*, until June 29, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3104. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** On March 14, 2008, the Commission instituted this investigation, based on a complaint filed by Farouk Systems, Inc. ("FSI") of Houston, Texas. The respondents named in the notice of investigation were: 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. ("Mount Rise") of Dongguan, China; and Dongguan Fumeikang Electrical Technology Co., Ltd. ("Dongguan Fumeikang") of Dongguan, China. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. On May 21, 2008, Dongguan

Fumeikang was terminated from this investigation on the basis of a consent order. See Order No. 8. The Commission determined not to review Order No. 8 on June 13, 2008. On December 4, 2008, Princess Silk was terminated from this investigation on the basis of a consent order. See Order No. 11. The Commission determined not to review Order No. 11 on December 23, 2008.

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 ALJ issued Order No. 12, which ordered Mount Rise, Kamashi and CHI Systems to show cause why they should not be found in default. No responses to Order No. 12 were filed. On January 30, 2009, the ALJ issued Order No. 13, an ID granting FSI's motion to find Mount Rise, Kamashi, and CHI Systems in default for failure to respond to Order No. 12. No petitions for review were filed. The Commission determined not to review Order No. 13.

FSI also filed a motion for summary determination of violation by Mount Rise, Kamashi, and CHI Systems on November 10, 2008. These entities were the last remaining respondents, the investigation having been terminated based on consent orders with respect to all other respondents. Pursuant to Commission Rule 210.16(c)(2), 19 C.F.R. § 216(c)(2), FSI declared that it would seek a general exclusion order when it filed its motion for summary determination of violation.

On March 10, 2009, the ALJ issued the subject ID, Order No. 14, granting FSI's motion for summary determination of violation. He also issued his recommendations on remedy and bonding. No petitions for review were filed. The Commission has determined not to review Order No. 14. The Commission has also determined to extend the target date for completion of the investigation by 17 days, *i.e.*, until June 29, 2009.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005. *70 Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

**WRITTEN SUBMISSIONS:** Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the HTSUS numbers under which the accused products are imported.

Written submissions must be filed no later than close of business on May 8, 2009. Reply submissions must be filed no later than the close of business on May 15, 2009. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 14 (March 10, 2009). No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

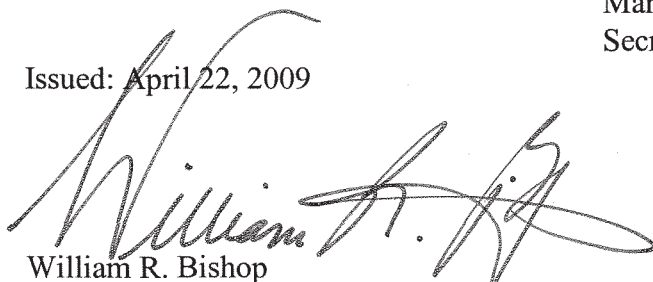
The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.16 and 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16; 210.42-46).

By order of the Commission.



Marilyn R. Abbott  
Secretary to the Commission

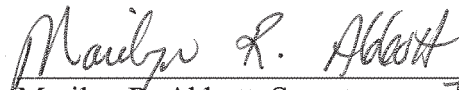
Issued: April 22, 2009



William R. Bishop  
Acting Secretary to the Commission

**PUBLIC CERTIFICATE OF SERVICE**

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL DETERMINATION; SCHEDULE FOR SUBMISSIONS: EXTENSION OF TARGET DATE** has been served by hand upon the Commission Investigative Attorney, Aarti Shah, Esq., and the following parties as indicated, on APR 23 2009.

  
Marilyn R. Abbott, Secretary *JTB*  
U.S. International Trade Commission  
500 E Street, SW  
Washington, DC 20436

**ON BEHALF OF COMPLAINANT FAROUK  
SYSTEMS, INC.:**

Philippe M. Bruno, Esq.  
**GREENBERG TRAUIG LLP**  
2101 L Street, NW  
Suite 1000  
Washington, DC 20037  
P-202-331-3100  
F-202-331-3101

- Via Hand Delivery
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- Via First Class Mail
- Other: \_\_\_\_\_





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

**In the Matter of**

**CERTAIN HAIR IRONS AND  
PACKAGING THEREOF**

**Investigation No. 337-TA-637**

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL  
DETERMINATION FINDING THE REMAINING RESPONDENTS IN DEFAULT**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 13) issued by the presiding administrative law judge ("ALJ") finding the remaining three respondents in this investigation in default.

**FOR FURTHER INFORMATION CONTACT:** Jonathan J. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3112. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** On March 14, 2008, the Commission instituted this investigation, based on a complaint filed by Farouk Systems, Inc. ("FSI") of Houston, Texas. The respondents named in the notice of investigation were: 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. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. On May 21, 2008, Dongguan Fumeikang was terminated from this investigation on the basis of a consent order. See Order No. 8. The Commission determined not to review Order No. 8 on June 13, 2008. On December 4,

2008, Princess Silk was terminated from this investigation on the basis of a consent order. See Order No. 11. The Commission determined not to review Order No. 11 on December 23, 2008.

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 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. No responses to Order No. 12 were filed.

On January 30, 2009, the ALJ issued the subject ID, Order No. 13, granting FSI's motion because Mount Rise, Kamashi, and CHI Systems did not respond to Order No. 12. No petitions for review were filed. The Commission has determined not to review the subject ID.

Mount Rise, Kamashi, and CHI Systems were the last remaining respondents in this investigation. The investigation has been terminated with respect to all other respondents based on settlement agreements and consent orders. Complainant has indicated that it will seek a general exclusion order under Commission Rule 210.16(c)(2), 19 C.F.R. § 216(c)(2).

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.16 and 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16; 210.42-46).

By order of the Commission.



Marilyn R. Abbott  
Secretary to the Commission

Issued: February 26, 2009



PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL DETERMINATION FINDING THE REMAINING RESPONDENTS IN DEFAULT has been served by hand upon the Commission Investigative Attorney, Aarti Shah, Esq., and the following parties as indicated, on February 26, 2009.

Marilyn R. Abbott
Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

ON BEHALF OF COMPLAINANT FAROUK SYSTEMS, INC.:

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RESPONDENTS:

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UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

In the Matter of

CERTAIN HAIR IRONS AND PACKAGING THEREOF

Inv. No. 337-TA-637

**Order No. 13: INITIAL DETERMINATION Finding Respondents Mount Rise,  
Kamashi And CHI Systems In Default**

By publication of a notice in the *Federal Register* on March 14, 2008, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, the Commission instituted this investigation to determine:

[W]hether there is a violation of subsection (a)(1)(C) 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 hair irons and packaging thereof that infringe U.S. Trademark Registration No. 2,660,257, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

73 Fed. Reg. 13918 (2008).

The complainant is Farouk Systems, Inc. ("FSI") of Houston, Texas. The respondents named in the notice of investigation were: CHI Systems Singapore Pte. Ltd. ("CHI Systems") of Singapore; Princess Silk, LLC ("Princess Silk") of Lake Forest, California; Kamashi International ("Kamashi") of Hong Kong; Mount Rise Ltd. ("Mount Rise") of Dongguan, China; and Dongguan Fumeikang Electrical Technology Co., Ltd. ("Dongguan Fumeikang") of Dongguan, China. The Commission Investigative Staff ("Staff") of the Office of Unfair Import Investigations is also a party in this investigation. *Id.*

Dongguan Fumeikang was terminated from this investigation on the basis of a consent



order. *See* Order No. 8 (Initial Determination); Notice of Comm’n Determination Not to Review an Initial Determination Terminating the Investigation with Respect to Respondent Dongguan Fumeikang Electrical Technology Co., Ltd. Based on Consent Order (June 13, 2008). Similarly, Princess Silk was terminated from this investigation on the basis of a consent order. *See* Order No. 11 (Initial Determination); Notice of Comm’n 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 (Dec. 22, 2008). Consequently, three respondents remain in this investigation: Mount Rise, Kamashi and CHI Systems.

Pursuant to 19 U.S.C. § 1337(g)(1) and 19 C.F.R. § 210.16, FSI filed a motion for an order to show cause, and findings of default, against Mount Rise, Kamashi and CHI Systems. (Motion No. 637-9). FSI argued that Mount Rise, Kamashi and CHI Systems failed to respond to the complaint and notice of investigation. Thus, it was argued, a show-cause order should issue. *See* Mot. at 1-3. Further, in accordance with 19 C.F.R. § 210.16(c)(2), the motion declared that FSI would seek a general exclusion order.<sup>1</sup> FSI would also request cease and desist orders, if “appropriate.” *See id.* at 1, 4.

None of the respondents in question filed a response to FSI’s motion.<sup>2</sup> The Staff filed a

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<sup>1</sup> The Commission’s Rules provide that in any motion requesting the entry of default or the termination of an investigation as to the last remaining respondent, the complainant shall declare whether it seeks a general exclusion order. The Commission may issue a general exclusion order if a violation of section 337 is established “by substantial, reliable and probative evidence, and only after considering” the public interest factors and requirements of 19 C.F.R. § 210.50(c). *See* 19 C.F.R. § 210.16(c)(2). In view of those requirements, FSI filed its “Motion for Summary Determination on the Economic Prong of the Domestic Industry, Section 337 Violation and Remedy.” (Motion No. 637-7).

<sup>2</sup> The Commission’s Rules provide that if a nonmoving party fails to respond to a  
(continued...)

response supporting the issuance of an order to show cause. *See* Staff Resp. at 1-4.

As detailed in Order No. 12 and in FSI's motion, on March 11, 2008, the Commission Secretary sent copies of the complaint and notice of investigation to Mount Rise, Kamashi and CHI Systems. Only the mail to Mount Rise was returned. *See* Order No. 12 at 3; Mot. Ex. 1. Subsequently, pursuant to 19 C.F.R. § 210.11(b), Order No. 10 granted FSI's motion requesting that it be permitted to attempt personal service on Mount Rise. On September 30, 2008, FSI effected actual service on Mount Rise. *See* Order No. 12 at 3; Mot. Ex. 2. In Order No. 12, it was noted that many weeks, or in some cases months, had passed since responses to the complaint and notice of investigation were due from Mount Rise, Kamashi and CHI Systems. Yet, none of them had filed a response. *See* Order No. 12 at 3.<sup>3</sup> Accordingly, Order No. 12 granted FSI's motion, in part, by requiring that by December 30, 2008, Mount Rise, Kamashi and CHI Systems file responses to the order showing cause why they should not be found in default. *See id.* at 3-4.<sup>4</sup>

No response to Order No. 12 was received from Mount Rise, Kamashi or CHI Systems. Inasmuch as they did not respond to the complaint and notice of investigation, and did not respond to the order to show cause, they must be found in default. *See* 19 C.F.R. § 210.16(a)(1).

Accordingly, it is the INITIAL DETERMINATION of the undersigned that respondents

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<sup>2</sup>(...continued)  
motion, it may be deemed to have consented to the granting of the relief requested in the motion. *See* 19 C.F.R. § 210.15(c).


<sup>3</sup> In addition, none of the respondents in question is represented by counsel, or has otherwise appeared in this investigation.

<sup>4</sup> Order No. 12 also set forth the consequences, as provided in the Commission's Rules, of the entry of default. *See* Order No. 12 at 4.



Mount Rise, Kamashi and CHI Systems are in default. FSI's Motion No. 637-9 is GRANTED.<sup>5</sup>

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 contained herein.

  
\_\_\_\_\_  
Carl C. Charneski  
Administrative Law Judge

Issued: January 30, 2009

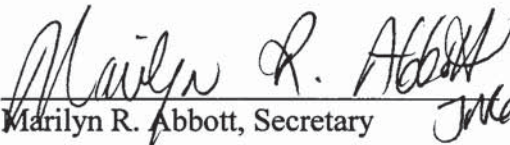
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<sup>5</sup> FSI's motion No. 637-9, granted herein, requests an order to show cause and the entry of default against Mount Rise, Kamashi and CHI Systems. Although the motion declares FSI's intention to seek a remedy, *see* discussion, *supra*, at 2 & n.1, FSI is not understood to seek a remedy through the motion, but rather in connection with its pending motion for summary determination and recommendation of remedy.

**PUBLIC CERTIFICATE OF SERVICE**

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, Aarti Shah, Esq., and the following parties as indicated, on

JAN 30 2009

  
Marilyn R. Abbott, Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112A  
Washington, D.C. 20436

**FOR COMPLAINANT FAROUK  
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