

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

**NOTICE OF ISSUANCE OF LIMITED EXCLUSION ORDER
AND CEASE AND DESIST ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice

SUMMARY: Notice is hereby given that the Commission has issued a limited exclusion order and a cease and desist order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1 ' 337), and in section 210.58 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. § 210.58).

On October 23, 1990, Stant, Inc. of Connersville, Indiana filed a complaint with the Commission alleging violations of section 337 in the importation and sale of certain automotive fuel caps and radiator caps and related packaging and promotional materials. The complaint alleged infringement of certain claims of U.S. Letters Patent Nos. 4,091,955, 4,177,931, 4,083,209, 4,765,505, 4,676,390, and 3,878,965; U.S. Trademark Reg. Nos. 1,507,054 and 814,666; and U.S. Copyright Reg. Nos. TX 1,783,598; TX 2,134,460, TX 2,344,359, TX 2,876,401, and TX 2,851,757.

The Commission instituted an investigation into the allegations of Stant's complaint and published a notice of investigation in the Federal Register, 55 Fed. Reg. 49434 (November 28, 1990).

On March 5, 1991, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding the respondents Gin Seng Industrial Co. ("Gin Seng") and Chieftain-Uniworld Co. ("Chieftain"), the last two respondents remaining in the investigation, in default.

On April 5, 1991, the Commission determined not to review the ID, and made an explicit finding that there had been a violation of section 337. The Commission solicited comments from the parties, interested government agencies, and other persons concerning the issues of remedy, the public interest, and bonding.

Complainant and the Commission investigative attorneys filed proposed remedial orders and addressed the issues of remedy, the public interest, and bonding. No comments were filed by interested government agencies or other persons.

Having determined that there is a violation of section 337, the Commission considered the questions of the appropriate remedy, whether the statutory public interest factors preclude the issuance of a remedy, and bonding during the Presidential review period. The Commission considered the submissions of the parties and the entire record in the investigation. The Commission determined that the appropriate form of relief is a cease and desist order directed to the U.S. respondent Chieftain, and a limited exclusion order excluding products manufactured abroad by Gin Seng that are covered by the the claims at issue of U.S. Patent Nos. 4,091,955, 4,177,931, 4,083,209, 4,765,505, 4,676,390, or 3,878,965; U.S. Trademark Reg. Nos. 1,507,054 or 814,866; and U.S. Copyright Reg. Nos. TX 1,783,598, TX 2,134,460, TX 2,344,359 TX 2,876,401, or TX 2,851,757. The Commission further determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude the issuance of the aforementioned relief, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles concerned.

Copies of the Commission's orders and all other nonconfidential documents filed in connection with this investigation are 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.

By order of the Commission.

Kenneth R. Mason
Secretary

Issued: August 16, 1991

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

In the Matter of)
CERTAIN AUTOMOTIVE FUEL CAPS AND)
RADIATOR CAPS AND RELATED PACKAGING))
AND PROMOTIONAL MATERIALS)

)
Investigation No. 337-TA-319

ORDER

On October 23, 1990, Stant, Inc., of Connersville, Indiana filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation and sale of certain automotive fuel caps and radiator caps and related packaging and promotional materials. The complaint alleged infringement of certain claims of U.S. Letters Patent Nos. 4,091,955, 4,177,931, 4,083,209, 4,765,505, 4,676,390, and 3,878,965; U.S. Trademark Reg. Nos. 1,507,054 and 814,666; and U.S. Copyright Reg. Nos. TX 1,783,598; TX 2,134,460, TX 2,344,359, TX 2,876,401, and TX 2,851,757.

The Commission instituted an investigation into the allegations of Stant's complaint and published a notice of investigation in the Federal Register. 55 Fed. Reg. 49434 (November 28, 1990). The notice of investigation named the following firms as respondents: Gin Seng Industrial Co., Ltd. of Tainan, Taiwan; Chieftain-Uniworld Corp. d/b/a Chieftain Automotive Products, of North Augusta, South Carolina; and Transworld Products, Inc. of Shawnee Mission, Kansas.

On March 5, 1991, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding respondents Gin Seng Industrial Co. ("Gin Seng") and Chieftain-Uniworld Co. ("Chieftain"), the last two respondents remaining in the investigation, in default.¹

On April 5, 1991, the Commission determined not to review the ID, and made an explicit finding that there had been a violation of section 337. The Commission solicited comments from the parties, interested government agencies, and other persons concerning the issues of remedy, the public interest, and bonding.

¹ The investigation was terminated with respect to Transworld Products, Inc. on the basis of a settlement agreement. 56 Fed. Reg. 5236 (February 8, 1991).

Having determined that there is a violation of section 337, the Commission considered the questions of the appropriate remedy, whether the statutory public interest factors preclude the issuance of a remedy, and bonding during the Presidential review period. The Commission considered the submissions of the parties and the entire record in this investigation." The Commission has determined that the appropriate form of relief is a cease and desist order directed to Chieftain and a limited exclusion order excluding products abroad made by Gin Seng that are covered by the claims at issue of U.S. Letters Patent Nos. 4,091,955, 4,177,931, 4,083,209, 4,765,505, 4,676,390, and 3,878,965; U.S. Trademark Reg. Nos. 1,507,054 and 814,866; and U.S. Copyright Reg. Nos. TX 1,783,598, TX 2,134,460, TX 2,344,359, TX 2,876,401, and TX 2,851,757. The Commission further has determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude the issuance of the aforementioned relief. Finally, the Commission has determined that the bond during the Presidential review period shall be in the amount of 100 percent of entered value of imported articles in question.

Accordingly, it is **hereby ORDERED THAT --**

1. Automotive fuel caps manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of claims 1-9 of U.S. Letters Patent 4,091,955, are excluded from entry into the United States for the remaining term of the patent, except under license of the patent owner.
2. Automotive fuel caps manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of claims 1-15 of U.S. Letters Patent 4,765,505, are excluded from entry into the United States for the remaining term of the patent, except under license of the patent owner.
3. Automotive fuel caps manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of claims 1-12 of U.S. Letters Patent 4,177,931, are excluded from entry into the United States for the remaining term of the patent, except under license of the patent owner.
4. Automotive fuel caps manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of claims 1-17 of U.S. Letters Patent 4,083,209, are excluded from entry into the United States for the remaining term of the patent, except under license of the patent owner.
5. Automotive fuel caps manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of claims 1-36 and 38-42 of U.S. Letters

Patent 4,676,390, are excluded from entry into the United States for the remaining term of the patent, except under license of the patent owner.

6. Automotive radiator caps manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of claims 1-9 of U.S. Letters Patent 3,878,965, are excluded from entry into the United States for the remaining term of the patent, except under license of the patent owner.
7. Automotive parts catalogues manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by U.S. Trademark Registration'Nos. 1,507,054 or 814,866 are excluded from entry into the United States except under license of the trademark owner.
8. Automotive parts catalogues manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd., of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of U.S. Copyright Registration Nos. TX 1,783',598, TX 2,134,460, TX 2,344,359, TX 2,851,757, or TX 2,876,401, are excluded from entry into the United States except under license of the copyright owner.
9. In accordance with 19 U.S.C. § 1337(l), the provisions of this **Order** do not apply to automotive fuel caps, automotive radiator caps, or automotive parts catalogues imported by or for the United States.
10. The items identified in paragraphs 1 through 8 of this **Order** are entitled to entry into the United States under bond in the amount of one hundred (100) percent of their entered value from the day after this **Order** is received by the President, pursuant to 19 U.S.C. § 1337(j)(3), until such time as the President notifies the Commission that he approves or disapproves this **Order**, but in any event, no later than 60 days after the date of receipt of this **Order** by the President.
11. The Commission may amend this **Order** in accordance with the procedure described in section 211.57 of the Commission's Interim Rules of Practice and Procedure, 19 C.F.R. § 211.57.
12. A copy of this **Order** shall be served upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, and the Federal Trade Commission.
13. Notice of this **Order** shall be published in the Federal Register.

By order of the Commission.

Kenneth R. Mason
Secretary

Issued: August 16, 1991

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

In the Matter of)
) Investigation No. 337-TA-319
CERTAIN AUTOMOTIVE FUEL CAPS AND)
RADIATOR CAPS AND RELATED PACKAGING))
AND PROMOTIONAL MATERIALS)
_____)

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Chieftain-Uniwo rld Corporation d/b/a Chieftain Automotive Products, 20 Revco Road, North Augusta, South Carolina 29841, cease and desist from marketing, distributing, offering for sale, selling, or otherwise transferring (except for reexportation) in the United States certain automotive fuel caps and radiator caps, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. I.

I.

(Definitions)

As used in this order:

- (A) "Commission" shall mean the United States International Trade Commission.
 - (B) "Complainant" shall mean Stant, Inc., 1620 Columbia Avenue, Connersville, Indiana 47331.
 - (C) "Respondent" shall mean Chieftain-Uniworld Corporation d/b/a Chieftain Automotive Products, 20
load, North Augusta, South Carolina, 29841.
 - (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation,
legal or business entity other than the above Respondent or its majority owned and/or controlled
ries, their successors, or assigns.
 - (E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

II.

(Applicability)

The provisions of this Cease and Desist **Order** shall apply to Respondent and to its principals, stockholders,

officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, in accordance with Section VII hereof.

III.

(Conduct Prohibited)

The following conduct of Respondent in the United States is prohibited by this Order. Respondent shall not:

(A) market, distribute, offer for sale, sell, or otherwise transfer (except for reexportation) in the United States imported automotive fuel caps that are covered by any of claims 1-9 of U.S. Letters Patent 4,091,955, claims 1-15 of U.S. Letters Patent 4,765,505, claims 1-12 of U.S. Letters patent 4,177,931, claims 1-17 of U.S. Letters Patent 4,083,209, or claims 1-36 or 3842 of U.S. Letters Patent 4,676,390, for the respective remaining terms of those patents;

(B) market, distribute, offer for sale, sell or otherwise transfer (except for reexportation) in the United States imported radiator caps that are covered by any of claims 1-9 of U.S. Letters Patent 3,878,965 for the remaining term of the patent.

IV.

(Conduct Permitted)

Notwithstanding any other provision of this order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, Complainant licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of automotive fuel or radiator caps by or for the United States.

V.

(Reporting)

For purposes of this reporting requirement, the reporting period shall commence on the first day of July, and shall end on the following last day of June. The first report required under this section shall cover the period

August 16, 1991, through June 30, 1992. This reporting requirement shall continue in force until the latest date of expiration of the patents specified in Section III (Conduct Prohibited) herein, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this **Order**, that he disapproves this **Order**.

Any failure to report shall constitute a violation of this **Order**.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the following:

- (A) The identity of every model of foreign-made fuel cap and radiator cap that Respondent has imported into or sold in the United States during the period; and
- (B) The unit and dollar quantities of imports and sales for each model identified pursuant to subparagraph V(A) of this **Order**.

VI.

(Recordkeeping and Inspection)

(A) For the purpose of securing compliance with this **Order**, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of imported automotive fuel and radiator caps, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of two (2) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this **Order** and for no other purpose, and subject to any privilege recognized by the Federal Courts of the United States, duly authorized representatives of the Commission shall, upon reasonable written notice by the Commission or its staff, be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, financial reports, and other records and documents, both in detail and in summary form for the purpose of verifying any matter or statement contained in the reports required to be retained under subparagraph VI(A) of this Order.

VII.

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

- (A) Serve, within thirty (30) days after the effective date of this **Order**, a copy of this **Order** upon each of its respective officers, directors, managing agents, agents and employees who have any responsibility for the marketing, distribution, or sale of imported fuel caps and radiator caps in the United States;
- (B) Serve, within thirty (30) days after the succession of any persons referred to in subparagraph VII(A) of this **Order**, a copy of the **Order** upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the **Order** has been served, as described in subparagraphs VII(A) and VII(B) of this **Order**, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of the last of the patents specified in Section III (Conduct Prohibited) herein.

VIII.

(Confidentiality)

Information obtained by means provided for in Sections V and VI of this **Order** will be made available only to the Commission and its authorized representatives, will be entitled to confidential treatment, and will not be divulged by any authorized representative of the Commission to any person other than duly authorized representatives of the Commission, except as may be required in the course of securing compliance with this **Order**, or as otherwise required by law. Disclosure hereunder will not be made by the Commission without ten (10) days prior notice in writing to Respondent.

IX.

(Enforcement)

Violation of this **Order** may result in any of the actions specified in section 211.56 of the Commission's

Interim Rules of Practice and Procedure, 1 C.F.R. § 211.56, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this **Order**, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

(Modification)

The Commission may amend this **Order** on its own motion or in accordance with the procedure described in section 211.57 of the Commission's Interim Rules of Practice and Procedure, 19 C.F.R. § 211.57.

XI.

(Bonding)

With respect to automotive fuel and radiator caps imported prior to August 16, 1991, the conduct prohibited by Section III of this **Order** may be continued during the period in which this order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930 (19 U.S.C. § 1337(j)), subject to Respondent posting a bond in the amount of one hundred (100) percent of the entered value of the articles in question. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this **Order**. Automotive and radiator caps imported on or after August 16, 1991, are subject to the entry bond as set forth in the limited exclusion order issued by the Commission on August 16, 1991, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. See Commission Interim Rule 210.58, 19 C.F.R. § 210.58. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this **Order**.

The bond is to be forfeited in the event that the President approves, or does not disapprove within the Presidential review period, the Commission's Orders of August 16, 1991, or any subsequent final order issued after

the completion of Investigation 337-TA-319, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal. or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an Order issued by the Commission based upon application therefor made by Respondent to the Commission.

By order of the Commission.

Kenneth R. Mason
Secretary

Issued: August 16, 1991

CERTAIN AUTOMOTIVE FUEL CAPS
AND RADIATOR CAPS AND RELATED
PACKAGING AND PROMOTIONAL MATERIALS

337-TA-319

CERTIFICATE OF SERVICE

I, Kenneth R. Mason, hereby certify that the attached Notice of Issuance of limited exclusion order and cease and desist order was served upon Gary Nath, Esq. and Linda Odom, Esq. and parties via first class mail, and air mail where necessary-on August 19, 1991.

Kenneth R. Mason, Secretary
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

For Complainant **STANT. INC.**

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RESPONDENTS

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Tainan 70901 Taiwan

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Chieftain Automotive Products
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Transworld Products, Inc.
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Shawnee Mission, Kansas 66203

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