

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

In the Matter of

**CERTAIN AUTOMOTIVE MEASURING
DEVICES, PRODUCTS CONTAINING
SAME, AND BEZELS FOR SUCH
DEVICES**

Inv. No. 337-TA-494

LIMITED EXCLUSION ORDER

The Commission instituted this investigation on June 20, 2003, based on a Complaint filed on May 16, 2003 by Complainant Auto Meter Products, Inc. (“Auto Meter”) of Sycamore, Illinois, against the following Respondents: American Products, Inc., Auto Gauge (Taiwan) Co., Ltd. (“AGT”), Blitz North America, Inc., Equus Products, Inc., GR Motorsports, Inc. d/b/a Matrix GR Motorsports, Inc., Hiper Industries, Inc., Jimray Technology, Inc. d/b/a R-1 Racing Sports, Inc., Leader Way International, Inc., Longacre Industries, Inc. d/b/a Longacre Racing Products, Inc., Racing Parts Group, Inc., and Accutech, Old World Industries, Inc. d/b/a Old World Automotive Products, SplitFire, and SplitFire International, Inc., PointZero Gauge Company d/b/a QuickCar Racing Products, and Tenzo R d/b/a Autotech Systems and Accessories (“Tenzo”). 68

Fed. Reg. 37023-24 (June 20, 2003). The Complaint was subsequently amended to add the following seven Respondents: Blitz Co., Ltd., Modern Work, Inc. (“Modern Work”), Dynamic Exhaust Industry Co., Ltd. (“Dynamik”), LPL Trans Trade Co. (“LPL”), Transglobal, GSN Automotive, Inc., and Equus, Inc. 68 *Fed. Reg.* 75280 (Dec 30, 2003); 69 *Fed. Reg.* 2732 (January 20, 2004).

The Complaint alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automotive measuring devices, products containing same, and bezels for such devices by reason of infringement or misappropriation of Auto Meter’s logo trademark (U.S. Registration No. 1,732,643) (“Logo Trademark”), Auto Meter’s “Auto Gage” trademark (U.S. Registration No. 1,497,472) (“Auto Gage Trademark”); Auto Meter’s Super Bezel trademark, U.S. Supplemental Registration No. 1,903,908,¹ and common law trade dress, and the trade dress of Auto Meter’s 5-inch “Monster Tachometers.”

The investigation was terminated as to all Respondents on the basis of consent orders and/or settlement agreements *except* as to the following Respondents, which were found in default in this investigation through the

¹ Auto Meter’s alleged common law rights in the Super Bezel trade dress are broader than those claimed in the Supplemental Registration inasmuch as the latter is limited to bezels that are silver in color while the former is not color specific.

following orders: AGT (Order No. 18 (April 8, 2004), Commission Notice of Non-Review (May 2, 2004)); Dynamik (Order No. 31 (June 7, 2004), Commission Notice of Non-Review (August 6, 2004)); and LPL (Order No. 33 (June 9, 2004)), Commission Notice of Non-Review (June 30, 2004); Modern Work (Order No. 32 (June 7, 2004), Commission Notice of Non-Review (August 6, 2004)); and Tenzo (Order No. 13 (December 17, 2003), Commission Notice of Non-Review (January 8, 2004)). Accordingly, pursuant to section 337(g)(1), 19 U.S.C. § 1337(g)(1), and Commission Rule 210.16(a), 19 C.F.R. § 210.16(a), the Commission presumes the facts alleged in the Complaint to be true against these parties.

With respect to its Super Bezel trade dress, Auto Meter alleges in the Complaint, as amended, that the elements of the asserted trade dress include a bezel with “(a) a convex outer periphery, (b) a concave inner periphery, and (c) a height greater than other bezels, which results in a height to diameter ratio greater than that of bezels used on competitive products.” Complaint, ¶ 23. Photographs and drawings of unmounted Super Bezels and Auto Meter products incorporating the Super Bezel trade dress are found in the Complaint as Exhibits 1, 5, 12-13, 16, and 24, which are attached hereto.

With respect to the Monster Tachometer trade dress, Auto Meter alleges in the Complaint that the elements of this asserted trade dress include

(a) a prominent 5-inch diameter bezel with a high profile; (b) a relatively long case comprising an approximately 5" diameter dial

housing section, a distinctive “step down,” and an approximately 3 3/8" diameter rear housing section; and (c) also, when externally mounted, a prominent, metallic “shock strap,” designed to visually suggest and repeat the bezel appearance, which encircles the rear housing section (not the bezel or dial housing) of the tachometer at about the mid-point.

Complaint, ¶ 28. Photographs of Auto Meter products incorporating the Monster Tachometer trade dress are found in the Complaint as Exhibits 28 (at p. 44) and 39 (tachometer on left on each of three pages constituting exhibit 39), which are attached hereto.²

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 the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of automotive measuring devices and products containing same, and bezels for such devices, that misappropriate Auto Meter’s trade dresses and infringe its trademarks and that are manufactured abroad by or on behalf of, or imported by or on behalf of, the defaulting Respondents. Specifically, the limited exclusion order prohibits such importation by Respondents AGT and Dynamik with respect to the Logo Trademark, the Auto Gage Trademark, the Super Bezel trademark and trade dress, and the Monster

² As to Auto Meter’s Logo Mark and Auto Gage trademarks, these marks are shown in their respective registrations. Complaint, Exhibits 2 and 3, which are attached hereto.

Tachometer trade dress. The limited exclusion order prohibits such importation by Respondent Tenzo with respect to the Super Bezel and Monster Tachometer trade dresses. It also prohibits such importation by Respondent Modern Work with respect to the Monster Tachometer trade dress, and by Respondent LPL with respect to the Super Bezel trade dress.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(g)(1) do not preclude issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of automotive measuring devices, products containing the same, and bezels for such products.

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

1. Automotive measuring devices, including those incorporated into a gauge panel, that infringe Auto Meter's Logo Mark, Auto Gage Trademark, the Super Bezel trademark or trade dress or the Monster Tachometer trade dress that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondents Auto Gauge (Taiwan) Co., Ltd. or Dynamic Exhaust Industry Co., Ltd. or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, except under license of the trademark or trade dress owner or as provided by law.

2. Tachometers, including those incorporated into a gauge panel, that infringe the Super Bezel trademark or trade dress or the Monster Tachometer trade dress that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondent Tenzo R d/b/a Autotech Systems and Accessories or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, except under license of the trade dress owner or as provided by law.

3. Tachometers, including those incorporated into a gauge panel, that infringe the Monster Tachometer trade dress that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondent Modern Work, Inc. or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, except under license of the trade dress owner or as provided by law.

4. Automotive measuring devices, including those incorporated into a gauge panel, that infringe the Super Bezel trademark or trade dress that are manufactured abroad by or on behalf of, or imported by or on behalf of Respondent LPL Trans Trade Co. or any of its affiliated companies, parents,

subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, except under license of the trade dress owner or as provided by law.

5. For the purpose of assisting the U.S. Bureau of 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 copies of drawings and photographs provided by Auto Meter in its Complaint of Auto Meter devices incorporating the elements of the asserted Super Bezel trade dress and Monster Tachometer trade dress described above.

6. Automotive measuring devices and gauge panels containing same, that are excluded by paragraphs 1-4 of this Order are entitled to entry for consumption into the United States, 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), from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action but, in any event, not later than 60 days after the date of receipt of this action.

7. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to automotive measuring devices and gauge panels containing the

same 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.

8. 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.

9. 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 Bureau of Customs and Border Protection.

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

By Order of the Commission.

Marilyn R. Abbott
Secretary

Issued: _____

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

In the Matter of

**CERTAIN AUTOMOTIVE MEASURING
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DEVICES**

Investigation No. 337-TA-494

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Tenzo R d/b/a Autotech Systems and Accessories, 20758 Centre Point Parkway, Santa Clarita, California 91350 (hereinafter “Tenzo”), cease and desist from conducting any of the following activities in the United States: importing, selling, advertising, distributing, marketing, consigning, transferring (except for exportation), offering for sale in the United States, and soliciting U.S. agents or distributors for certain automotive measuring devices and products containing same, and bezels for such devices, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

Definitions

As used in this Order:

(A) “Commission” shall mean the United States International Trade Commission.

(B) “Auto Meter” shall mean Auto Meter Products, Inc., 314 West Elm Street, Sycamore, Illinois.

(C) “Complainant” shall mean Auto Meter.

(D) “Respondent” and “Tenzo” shall mean Tenzo R d/b/a Autotech Systems and Accessories, 20758 Centre Point Parkway, Santa Clarita, California 91350.

(E) “Person” shall mean an individual, or any nongovernmental partnership, firm, association, corporation, or other legal or business entity other than the Respondent or its majority owned or controlled subsidiaries, their successors, or assigns.

(F) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(G) The terms “import” and “importation” refer to importation for entry for consumption, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption under the Customs laws of the United States.

(H) The term “Super Bezel trade dress” shall mean, as described in the Complaint, a trade dress of an automotive measuring device that includes a bezel with (a) a convex outer periphery, (b) a concave inner periphery, and (c) a height greater than other bezels, which results in a height to diameter ratio greater than that of bezels used on competitive products.

(I) The term “Super Bezel trademark” shall mean U.S. Supplemental Registration No. 1,903,908.

(J) The term “Monster Tachometer trade dress” shall mean, as described in the Complaint, a trade dress of an automotive measuring device that includes (a) a prominent 5-inch diameter bezel with a high profile; (b) a relatively long case comprising an approximately 5" diameter dial housing section, a distinctive “step down,” and an approximately 3 3/8" diameter rear housing section; and (c) also, when externally mounted, a prominent, metallic “shock strap,” designed to visually suggest and repeat the bezel appearance, which encircles the rear housing section (not the bezel or dial housing) of the tachometer at about the mid-point.

(K) The term “covered product” shall mean tachometers, including those incorporated into a gauge panel, that infringe the Super Bezel trademark or trade dress or the Monster Tachometer trade dress.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, contractors, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. Until the Super Bezel trademark or trade dress or Monster Tachometer trade dress is abandoned, canceled, or become or are rendered invalid or unenforceable, the Respondent shall not:

(A) import or sell for importation into the United States covered product except under

license of the intellectual property owner;

(B) market, distribute, offer for sale, sell, consign, or otherwise transfer (except for exportation) in the United States imported covered product except under license of the intellectual property owner;

(C) advertise covered product for sale in the United States except under license of the intellectual property owner;

(D) solicit U.S. agents or distributors for covered product except under license of the intellectual property owner; or

(E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered product in the United States except under license of the intellectual property owner.

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, the owner of the intellectual property licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered product by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on January of each year and shall end on the subsequent December 31. However, the first report required under this section shall cover the period from the date of issuance of this Order through December 31, 2005. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered product in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of covered product that Respondent has imported or sold in the United States after importation during the reporting period and the quantity in units and value in dollars of reported covered product that remain in inventory in the United States at the end of the reporting period.

Any failure to make the required report or the filing of any false or

inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI.

Record-keeping 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 covered product, 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, upon reasonable written notice by the Commission or its staff, shall 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, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) 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 covered product in the United States;

(B) Serve, within fifteen (15) 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 trade dresses described herein are abandoned, canceled, or rendered valid or unenforceable.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the

Commission pursuant to Sections V and VI of the Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, 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 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued

during the sixty (60) day 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 of 100 percent of entered value of the products in question. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered product imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, 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 Rule 210.68, 19 C.F.R. § 210.68. 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, this Order, 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 therefore made by Respondent to the Commission.

By Order of the Commission.

Marilyn R. Abbott
Secretary

Issued: _____