

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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In the Matter of))
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CERTAIN AUTOMOTIVE PARTS) **Inv. No. 337-TA-557**
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**NOTICE OF FINAL DETERMINATION OF VIOLATION OF SECTION 337
AND ISSUANCE OF GENERAL EXCLUSION ORDER;
TERMINATION OF THE INVESTIGATION; DENIAL OF MOTION FOR
RECONSIDERATION**

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to find a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. Notice is also given that the Commission has issued a general exclusion order and has terminated the investigation. The Commission has also denied respondents' request for reconsideration of its determination on validity issues concerning obviousness.

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 205-3112. Copies of 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. General information concerning the Commission may 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>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 4, 2006, based on a complaint filed by Ford Global Technologies, LLC ("Ford") of Dearborn, Michigan. An amended complaint was filed on December 12, 2005, and a supplemental letter was filed on December 22, 2005. The amended complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automotive parts by reason of infringement of U.S. Design Patent Nos. D496,890 ("the '890 patent"), D493,552 ("the '552 patent"), D497,579 ("the '579 patent"), D503,135 ("the '135 patent"), D496,615 ("the '615 patent"), D502,561 ("the '561 patent"), D492,044 ("the '044 patent"), D503,912 ("the '912 patent") and D495,979 ("the '979 patent"). The complaint named the following as respondents: Keystone Automotive Industries, Inc. of Pomona, California; U.S. Autoparts Network, Inc. of Carson, California; Gordon Auto Body Parts Co., Ltd. of Taiwan; Y.C.C. Parts Manufacturing Co., Ltd. of Taiwan; TYC Brother Industrial Co., Ltd. of Taiwan; and Depo Auto Parts Ind. Co., Ltd. of

Taiwan (collectively "the Respondents"). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. On August 3, 2006, the Commission issued a notice not to review an initial determination (ID) granting partial termination of this investigation as to the '801, '685, '299, '658 patents.

On December 4, 2006, the ALJ issued the final ID, finding that the '119, '912, and '979 patents are invalid due to public use; that the '890, '552, '135, '579, '561, '044, and '615 patents are not invalid, are enforceable, and are infringed; and that there is a domestic industry involving the patents in issue. Thus, he found a violation of section 337 of the Tariff Act of 1930, as amended.

On December 15, 2006, Ford and the Respondents filed petitions for review. Ford sought review of the ALJ's finding that the '119, '912 and '979 patents are invalid as anticipated. The Respondents petitioned for review of the ALJ's findings that patents '890, '552, '579, '135, '615, '561, and '044 were not anticipated, obvious, or unenforceable and that none of the ten patents at issue were unenforceable for inequitable conduct, and of Orders No. 7 and 12, in which the ALJ denied certain affirmative defenses. The Office of Unfair Import Investigations opposed both petitions for review. On December 15, 2006, all parties filed responses to the petitions for review.

On December 26, 2006, the Commission determined to extend the deadline for determining whether to review the ALJ's ID by 60 days to March 20, 2007, and to extend the target date for completion of the investigation by 60 days to May 4, 2007.

On March 20, 2007, the Commission issued a notice of its decision not to review the ID. The notice indicated that the Commission sought comments from the parties to the investigation, interested government agencies, and any other interested parties on the issues of remedy, the public interest, and bonding.

On March 30, 2007, the Commission received comments from Ford, the Respondents, the IA, and from interested parties including Public Citizen Inc., the Center for Auto Safety, the Automotive Aftermarket Association, the National Association of Mutual Insurance Companies, and Property Casualty Insurers Association of America. Reply submissions were received from the National Automobile Dealers Association and the Alliance of Automobile Manufacturers.

On May 1, 2007, the respondents petitioned for reconsideration of the Commission's determination not to review the ALJ's finding in his final ID that the seven remaining design patents at issue were not invalid for obviousness based on a recent Supreme Court decision, *KSR Int'l Co. v. Teleflex Inc.*, 530 U.S. ____ (2007). On May 4, the Commission determined to waive the deadline for filing a petition for reconsideration and to extend the target date in the investigation to June 6, 2007 in order to consider respondents' petition for reconsideration. On May 9, 2007 and May 11, 2007, respectively, the IA and the complainant filed briefs in opposition to the respondents' petition. And on May 16, 2007, the respondents filed a motion for leave to supplement their petition for reconsideration.

Having examined the relevant portions of the record in this investigation, including the ALJ's ID and Recommended Determination (RD), the patents-at-issue, respondents' petition for reconsideration, responses thereto, and the written submissions on remedy, the public interest, and bonding, the Commission has made determinations regarding the issues remaining in the investigation. Particularly, the Commission has determined to deny respondents' petition for reconsideration and their motion for

leave to supplement their petition. Further, the Commission has determined to issue a general exclusion order prohibiting unlicensed entry for consumption of certain automotive parts that infringe the claim of the '890, '552, '579, '135, '615, '561, and '044 patents. In so doing, the Commission determined that the public interest factors enumerated in section 337(d) do not preclude the issuance of the aforementioned remedial order and that the bond during the period of Presidential review shall be 100 percent of the entered value of the articles in question. The Commission's order was delivered to the United States Trade Representative on the day of its issuance.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(d)(2)), and sections 210.41, 210.48, and 210.50 of the Commission's Rules of Practice and Procedure, (19 C.F.R. §§ 210.41, 210.48, and 210.50).

By order of the Commission.



Marilyn R. Abbott
Secretary to the Commission

Issued: June 6, 2007

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN AUTOMOTIVE PARTS

Inv. No. 337-TA-557

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) in the unlawful importation and sale of certain automotive parts that infringe the following design patents:

1. D496,890 (“the ‘890 patent”) covering a vehicle grille;
2. D493,552 (“the ‘552 patent’) covering a vehicle head lamp;
3. D503,135 (“the ‘135 patent”) covering a bumper lower valance;
4. D497,579 (“the ‘579 patent”) covering a bumper lower valance;
5. D496,615 (“the ‘615 patent”) covering a vehicle side view mirror;
6. D502,561 (“the ‘561 patent’) covering a vehicle tail lamp; and
7. D492,044 (“the ‘044 patent”) covering a vehicle tail lamp.

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 to prevent circumvention of an exclusion order limited to products of named persons and because there is a pattern of violation of section 337. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing automotive parts.

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. Motor vehicle grilles covered by the '890 patent 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, for the remaining term of the patent, except under license of the patent owner or as provided by law.

2. Vehicle head lamps covered by the '552 patent 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, for the remaining term of the patent, except under license of the patent owner or as provided by law.

3. Lower bumper valances covered by the '135 patent 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, for the remaining term of the patent, except under license of the patent owner or as provided by law.

4. Lower bumper valances covered by the '579 patent 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, for the remaining term of the patent, except under license of the patent owner or as provided by law.

5. Vehicle side view mirrors covered by the '615 patent 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, for the remaining term of the patent, except under license of the patent owner or as provided by law.

6. Vehicle tail lamps covered by the '561 patent 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, for the remaining term of the patent, except under license of the patent owner or as

provided by law.

7. Vehicle tail lamps covered by the '044 patent 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, for the remaining term of the patent, except under license of the patent owner or as provided by law.

8. Notwithstanding paragraphs 1 through 7 of this Order, the aforesaid automotive parts 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)), from the day after this Order is received by the United States Trade Representative as delegated by the President, 70 Fed. Reg. 43251 (July 21, 2005), 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.

9. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures it establishes, persons seeking to import automotive parts 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.

10. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to automotive parts 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.

11. 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).

12. 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.

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

By Order of the Commission.



Marilyn R. Abbott
Secretary

Issued: June 6, 2007

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached Notice of Final Determination has been served by hand upon the Commission Investigative Attorney, Juan Cockburn, Esq., and the following parties as indicated, on June 6, 2007.

Marilyn R. Abbott

Marilyn R. Abbott, Secretary
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