

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

In the Matter of

**CERTAIN COMPOSITE WEAR
COMPONENTS AND PRODUCTS
CONTAINING SAME**

Inv. No. 337-TA-644

LIMITED EXCLUSION ORDER

The Commission has determined pursuant to Commission Rule 210.17 that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation, sale for importation, and sale after importation by AIA Engineering Ltd. and Vega Industries of composite wear components and products containing same that infringe claims 12-13 and 16-21 of U.S. Patent No. Re. 39,998 (the '998 patent). Additionally, the Commission has determined that AIA Engineering Limited and Vega Industries are in default pursuant to Commission Rule 210.16 for failure to make and cooperate in discovery.

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 composite wear components and products containing same that infringe one or more of claims 12-13 and 16-21 of the '998 patent and are manufactured abroad by or on behalf of, or imported by or on behalf of AIA Engineering Limited or Vega Industries. The Commission has also determined that the appropriate form of relief includes a cease and desist order against Vega Industries.

The Commission has determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the limited exclusion order or cease and desist 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. Composite wear components and products containing same that are covered by one or more of claims 12-13 and 16-21 of the '998 patent and that are manufactured abroad by or on behalf of, or are imported by or on behalf of, AIA Engineering Limited or Vega Industries 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, for the remaining term of the patent, except under license of the patent owner or as provided by law.

2. Products that are excluded by paragraph 1 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 the entered value of such articles 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 and until such time as the United States Trade Representative notifies the Commission that this action is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this action.

3. At the discretion of U.S. Customs and Border Protection (“CBP”) and pursuant to the procedures it establishes, persons seeking to import composite wear components and products containing same 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 paragraph 1 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.

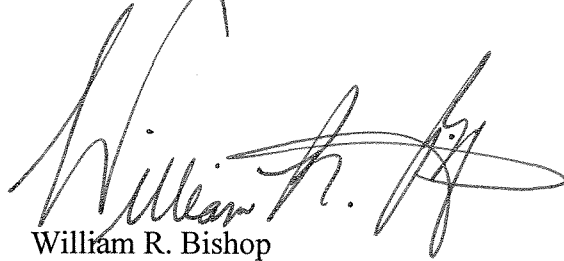
4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to composite wear components and products containing same that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

5. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission’s Rules of Practice and Procedure, 19 C.F.R. § 210.76.

6. 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 U.S. Customs and Border Protection.

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

By Order of the Commission.

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

William R. Bishop
Acting Secretary to the Commission

Issued: November 24, 2009

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

In the Matter of

**CERTAIN COMPOSITE WEAR
COMPONENTS AND PRODUCTS
CONTAINING SAME**

Inv. No. 337-TA-644

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Vega Industries cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, composite wear components and products containing same that infringe one or more of claims 12-13 and 16-21 of U.S. Patent No. Re. 39,998 (“the ‘998 patent”) 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) “Complainants” shall mean Magotteaux International S/A, Rue A. Dupont, Vaux-sous-Chèvremont, RPM Liege, Belgium, 405,785,543; and Magotteaux, Inc., 725 Cool Springs Boulevard, Franklin, Tennessee 37076.

(C) “Respondent” shall mean Vega Industries, 330 Franklin Road, Suite 135-180, Brentwood, Tennessee 37072.

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than 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 under the Customs laws of the United States.

(H) The term "covered products" shall mean composite wear components and products containing same that infringe one or more of claims 12-13 and 16-21 of the '998 patent.

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, 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 the Respondent in the United States is prohibited by the Order. For the remaining term of the patent, Respondent shall not:

(A) import or sell for importation into the United States covered products;

- (B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

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 '998 patent licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on January 1 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 January 1, 2010. 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 products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that

the Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

Respondents filing written submissions must file the original document and two copies with the Office of the Secretary. Any respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on complainant's counsel.¹

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 products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

(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 office 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 importation, marketing, distribution, or sale of imported covered products 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 date of expiration of the '998 patent.

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 section 201.6 of the Commission Rules of Practice and Procedure, 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 United States Trade Representative pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), subject to Respondent posting a bond in the amount of 100 percent of the entered value of the composite wear component or product containing same. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported during the period of Presidential review 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.

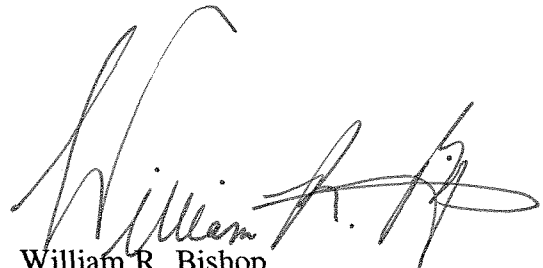
The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. See Commission Rule 210.68, 19 C.F.R. 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the respondent must serve a copy of the bond and any accompanying documentation on complainant's counsel.²

² Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

The bond is to be forfeited in the event that the United States Trade Representative 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 United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, 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.



William R. Bishop
Acting Secretary to the Commission

Issued: November 24, 2009