

United States International Trade Commission
Washington, D.C. 20436

In the Matter of:)	
)	Investigation No. 337-TA-114,
CERTAIN MINIATURE PLUG-IN)	Exclusion Order Modification
BLADE FUSES)	Proceeding

FINAL DETERMINATION AND COMMISSION ORDER

BACKGROUND

The Commission instituted the above-captioned investigation in 1982 to determine whether there was a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337 (1978 and 1981 Supp.)) in the importation or sale of certain miniature plug-in blade fuses that allegedly misrepresented their place of geographic origin, infringed the complainant's patents and/or trademarks, misappropriated the complainant's trade dress, were passed off as merchandise of the complainant, or were the subject of false advertising.¹ The complainant was the patent and trademark owner, Littelfuse, Inc., of Des Plaines, Illinois, a firm that manufactures and markets electronic devices, including the subject fuses.² The Commission named nine firms in Taiwan and three domestic firms as respondents in the investigation.³

In 1983, after determining that the importation or sale of the accused fuses violated section 337, the Commission issued a general exclusion order.⁴ Among other things, that order required the exclusion of imported miniature plug-in blade fuses having a trade dress, *i.e.*, a product configuration and/or packaging, simulating that of complainant Littelfuse.⁵

At the time of the investigation, Littelfuse marketed its miniature plug-in blade fuses under various trademarks, including "ATO."⁶ Littelfuse continued to use that mark after the investigation ended.

¹ See 47 Fed. Reg. 1448 (Jan. 13, 1982) (Notice of Investigation).

² Miniature plug-in blade fuses are installed in automobiles as original equipment. They also are sold in the automotive aftermarket, as replacement parts for original equipment.

³47 Fed. Reg. at 1448.

⁴ Certain Miniature Plug-In Blade Fuses, Investigation No. 337-TA-114, USITC Publication 1337 (January 1983)--Commission Action and Order (Jan. 13, 1983).

⁵ USITC Pub. 1337--Commission Action and Order at page 2, paragraph 2.

⁶ See USITC Pub. 1337--Commission Opinion at pages 25-26.

In 1988, Littelfuse obtained U.S. Trademark Registration No. 1,513,357 ("the '357 registration"), which covers the two-dimensional outline of the ATO fuse. The following year, Littelfuse obtained U.S. Trademark Registration No. 1,553,579 ("the '579 registration"), which covers the three-dimensional configuration of the ATO fuse housing.

In 1996, Wilhelm Pudenz GmbH, a German firm that was not a respondent in the Commission's investigation, challenged the validity of the aforesaid trademark registrations by filing a civil action in the United States District Court for the Northern District of Georgia, Atlanta Division.⁷ The district court decided that the individual features of the ATO fuse housing and the overall configuration of those features in the housing are functional and that this functionality renders the '357 and '579 registrations invalid and unenforceable.⁸ In 1999, the United States Court of Appeals for the Eleventh Circuit affirmed the district court's decision.⁹

The Commission was not a party to the Pudenz litigation, and the judicial decisions did not address the Commission's exclusion order. After learning of the decisions and conducting preliminary information-gathering,¹⁰ the Commission self-initiated this exclusion order modification proceeding under 19 C.F.R. § 210.76.¹¹

THE MODIFICATION PROCEEDING

The Commission is to take appropriate action in a modification proceeding after considering the petition for modification, any responses thereto, and any information placed on the record at a public hearing or otherwise.¹²

As noted, this modification proceeding was instituted on the Commission's own initiative. The Commission Order (Feb. 1, 2001) concerning the proceeding (Institution Order) thus served the same purpose and contained the same kind of information as a

⁷ Civil Action No. 1:95-CV-2445-JTC, Wilhelm Pudenz GmbH [and] Wickmann USA, Inc. v. Littelfuse, Inc.

⁸ See the [unpublished] Judgment and the [unpublished] Order issued on January 7, 1998.

⁹ Wilhelm Pudenz GmbH v. Littlefuse [sic], Inc., 177 F.3d 1204, 51 U.S.P.Q.2d 1045 (11th Cir. 1999).

¹⁰ See 19 C.F.R. § 210.71(a) and Commission Order (July 3, 2000).

¹¹ 66 Fed. Reg. 9359 (Feb. 7, 2001) (Notice of Exclusion Order Modification Proceeding and Request for Comments) (Institution Notice). See also Commission Order (Feb. 1, 2001) (Institution Order).

¹² 19 C.F.R. § 210.76(b).

petition for modification filed by a party under 19 C.F.R. § 210.76(a)(1).¹³ The Institution Order accordingly provided--

- a description of the modification contemplated by the Commission,
- a description of the changed conditions or fact or law or the public interest warranting the proposed modification (e.g., the judicial decisions rendering the product configuration of the '357 and '579 trademark registrations functional and not entitled to protection from unlicensed copying),¹⁴ and
- supporting materials and argument (e.g., Littelfuse's preliminary written report admitting that the product configuration covered by the exclusion order is substantially similar to the product configuration covered by the '357 and '579 trademark registrations, and the Commission investigative attorney's (IA's) written comments that in view of the judicial findings and Littelfuse's admission, the Commission should view the trade dress protected by the exclusion order as functional and no longer entitled to protection under section 337).

The Commission attempted to provide notice of the modification proceeding to all parties to the original investigation and to give them an opportunity to file written submissions.¹⁵

The only party that filed a submission in response to the Institution Order was the IA. IAs serve as advocates of the public interest in investigations or related proceedings under section 337. The IA's response to the Institution Order in this proceeding supported the proposed exclusion order modification for the reasons stated by the Commission in the Institution Order and for the reasons previously stated by the IA

¹³ Compare the information on pages 4-8 of the Institution Order with the petition requirements set forth in 19 C.F.R. § 210.76(a)(1).

¹⁴ See the Institution Order at pages 4-6.

¹⁵ See the Institution Order at pages 7-9. The complainant and the IA received their service copies of the Institution Order, the supporting materials, and the Institution Notice. The service copies mailed to the following respondents at the addresses they occupied during the original investigation were undeliverable and were returned to the Commission unopened: Yueh Jyh Metal Industrial Co., Ltd.; M & T Auto Parts; Speedway; Top Hole Trading Co., Ltd.; Fuji Industries; David Art & Handicraft Co.; Ltd.; Interchem Corp.; and Zeeman Fuse Manufacturing Corp. It is unclear whether respondent Terng Nan Industrial Corp. actually received its service copies. There also is no indication of whether the following respondents received their service copies, even though nearly ten months have passed since the Secretary mailed them: Leumark Industrial Co.; Ltd., Walter Electronic Co., Ltd.; and Rite Industrial Corp.

in his written comments during the Commission's preliminary information-gathering.¹⁶

The Commission conducted this modification proceeding without holding a public hearing or delegating the proceeding to an administrative law judge for a hearing and a recommended determination.¹⁷ However, the Commission solicited written submissions from interested persons and entities that were not parties to the investigation.¹⁸ No such submissions were filed.

DETERMINATION

An exclusion order remains in effect until the Commission finds, and notifies the Secretary of the Treasury that, conditions which led to the order no longer exist.¹⁹ The Commission hereby finds that such a change has occurred with respect to the trade dress provision of the exclusion order at issue. During the investigation, the nonfunctional nature of the asserted design features of Littelfuse's ATO fuses was one criterion the Commission applied in determining that Littelfuse's trade dress was entitled to protection from unauthorized copying.²⁰ The district and appellate courts have concluded, however, that as disclosed in the '357 and '579 registrations, individual features of the ATO fuse housing and the overall configuration of those features in the housing are functional.²¹ It is well established that functional features cannot be trade dress or trademarks.²² The Commission accordingly will notify the Secretary of the Treasury that conditions which led to the inclusion of product configuration in the trade dress provision of the exclusion order no longer exist.

That provision currently requires the exclusion of imported miniature plug-in

¹⁶ See Response of the Office of Unfair Import Investigations to the Commission's Order Instituting Modification Proceeding (Feb. 15, 2001).

¹⁷ See Institution Order at page 8; and 66 Fed. Reg. at 9360.

¹⁸ Institution Order at page 9; and 66 Fed. Reg. at 9360. See also Memorandum to The Automotive Aftermarket Industry Association et al. from Donna R. Koehnke, Secretary to the Commission (Feb. 1, 2001).

¹⁹ See 19 U.S.C. § 1337(k)(1).

²⁰ See USITC Pub. 1337--Commission Opinion at 19-21.

²¹ See Order at Findings of Fact and Conclusions of Law, Functionality, paragraphs 13-26, in Civil Action No. 1:95-CV-2445-JTC, Wilhelm Pudenz Gmbh [and] Wickmann USA, Inc. v. Littelfuse, Inc.; and 177 F.3d at 1212, 51 U.S.P.Q.2d at 1050.

²² See, e.g., Thomas McCarthy, 1 McCarthy on Trademarks and Unfair Competition, Chapter 7, Part IV (4th ed. 1997). (See also Order at Findings of Fact and Conclusions of Law, The Parties, Products, and Claims, at paragraphs 14 and 15, in Civil Action No. 1:95-CV-2445-JTC, Wilhelm Pudenz Gmbh [and] Wickmann USA, Inc. v. Littelfuse, Inc.; and 177 F.3d at 1207 and 51 U.S.P.Q.2d at 1046-1047.)

blade fuses having a trade dress, i.e., a product configuration and/or packaging, simulating that of complainant Littelfuse. For the reasons stated above, the Commission has determined to modify that provision by deleting the reference to product configuration. The modified provision thus will require the exclusion of imported miniature plug-in blade fuses having a trade dress, i.e., a packaging, simulating that of complainant Littelfuse.²³

ORDER

In light of the preceding DETERMINATION, it is hereby ORDERED that:

1. Page 2, paragraph 2, of the general exclusion order issued on January 13, 1983--i.e., the Commission Action and Order in Certain Miniature Plug-In Blade Fuses, Investigation No.337-TA-114, USITC Publication 1337 (January 1983)--is modified to read as follows:

2. Miniature plug-in blade fuses that unlawfully simulate the trade dress, that is, the packaging, of the complainant, Littelfuse, Inc., are excluded from entry into the United States except where such importation is licensed by Littelfuse;

2. The Secretary shall serve copies of this Final Determination and Commission Order, along with a cover letter from the Chairman, on the Secretary of the Treasury. The Secretary also shall serve copies of those documents on complainant Littelfuse, Inc. and the Commission investigative attorney.

3. The Secretary shall issue and serve copies of a Notice of Exclusion Order Modification on the entities specified in the preceding paragraph and shall publish the notice in the Federal Register.

By Order of the Commission.

²³ The Commission Opinion accompanying the exclusion order recounted a number of unfair acts in the respondents' packaging of their imported fuses. The Opinion cited (1) use of the Littelfuse marks ATO or Autofuse or the confusingly similar mark Auto Fuse, (2) the fact that the packaging of the imported fuses did not identify their manufacturer or their country of origin, and (3) the fact that the packaging concept used by one respondent had been first introduced by Littelfuse. See USITC Pub. 1337--Commission Opinion at pages 23, 16, 27, and 29.

The Commission therefore finds it appropriate to retain the packaging aspect of the trade dress provision in the exclusion order, to prevent the entry of an imported fuse with packaging which simulates that used by Littelfuse.

Marilyn R. Abbott
Secretary

Issued: March 20, 2002

Attachment (The General Exclusion Order)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C. 20436

)
In the Matter of)

) Investigation No. 337-TA-114
CERTAIN-MINIATURE PLUG-IN BLADE FUSES)
_____)

COMMISSION ACTION AND ORDER

Introduction

The U.S. International Trade Commission has conducted the above-captioned Investigation in order to determine whether there is violation of section 337 of the Tariff Act of 1930 (10, U.S.C. § 1337) by reason of unfair methods of competition and unfair acts in the importation into the United States of certain miniature plug-in blade fuses, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

This Action and Order provide for final disposition of Investigation No. 337-TA-114. It is based upon the Commission's determinations with respect to the violation of section 337, the appropriate remedy would have on the public interest, and the amount of the bond.

Action

Having reviewed the record in investigation No. 337-TA-114, including the recommended

determination of the presiding officer, the Commission, on November 22, 1982, determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the Importation of certain miniature plug-in blade fuses, and in their sale, the effect or tendency of which is to substantially Injure an industry, efficiently and economically operated, in the United States;

Having determined that there is a violation of section 337 of the Tariff Act of 1930 in this case, the Commission on December 1, 1982, determined that--

1. The appropriate remedy for the violation found to exist is a general exclusion order, pursuant to subsection (6) of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(d));
2. The public-interest factors enumerated in subsection (d) of section 337 of the Tariff Act of 1930 do not preclude the issuance of an exclusion order in this investigation; and
3. As provided in paragraph (3) of subsection (g) of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(g)(3)), the appropriate bond during the period this matter is pending before the President is 90 percent of the entered value of the articles concerned.

Order

Accordingly, it is hereby ORDERED THAT--

1. Miniature plug-in blade fuses that infringe claims 7 or 9 of U.S. Letters Patent 3,909,767 or claims 1, 2, or 13 of U.S. Letters Patent 4,131,869, or that are the product of a process which, if practiced In the United States, would infringe claims 2, 3, 6, or 11 of U.S. Letters Patent 4,040,175 or claim 17 of U.S. Letters Patent 4,056,P84, are excluded from entry into the United States for the remaining terms of the patents, except where such importation is licensed by the patent owner;
2. Miniature plug-in blade fuses that unlawfully simulate the trade dress (product configuration and/or packaging) of the complainant, Littelfuse, Inc., are excluded from entry into the United States except where such importation is licensed by Littelfuse;

3. Miniature plug-in blade fuses which infringe the "ATO" or "Autofuse" trademarks of the complainant, Littelfuse, Inc., or those which infringe the "ATC" trademark of the complainant's licensee, the Bussmann Division of McGraw-Edison Co., are excluded from entry into the United States except where such importation is licensed by Littelfuse or Bussman;
4. Miniature plug-in blade fuses or containers for such fuses that misrepresent the place of geographic origin shall be excluded from entry into the United States;
5. The articles directed to be excluded from entry into the United States shall be entitled to entry under bond in the amount of 90 percent of their entered value from the day after this order is received by the President pursuant to subsection (g)(3) of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(g)(3)) 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;
6. Notice of this Action and Order shall be published in the Federal Register;
7. A copy of this Action and Order and of the Commission Opinion issued in connection therewith shall be served upon each party of record to this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the Secretary of the Treasury; and
8. The Commission may amend this Order in accordance with the procedure described in section 211.57 of the Commission's Rules of Practice and Procedure (46 F.R. 17533, Mar. 18, 1981; to be codified at 19 C.F.R. § 211.57).

By order of the Commission.

Kenneth R. Mason

Secretary

Issued: January 13, 1983