

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC 20436

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CERTAIN CIGARETTES AND )  
PACKAGING THEREOF ) Investigation No. 337-TA-424  
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**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, sale for importation, and sale after importation of certain cigarettes and packaging thereof that infringe U.S. Trademark Registration Nos. 508,538; 747,482; 747,490; 2,218,589; 118,372; 335,113; 366,744. 404.302; 2,174,493; 2,055,297; and 311,961. In addition, the Commission has found violations of section 337 by reason of dilution of the aforementioned trademarks and false representation of source of cigarettes and packaging bearing the aforementioned trademarks.

Having reviewed the record in this investigation, including the written submissions of the parties and the comments of other agencies and the public, 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 of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation, sale for importation, and sale after importation of infringing cigarettes and packaging thereof.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. §§ 1337(d) and (f) do not preclude the issuance of the general exclusion order and that the bond during the Presidential review period shall be in the amount of seven dollars (\$7.00) per carton of the cigarettes in question.

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

1. The following cigarettes and packaging thereof that are manufactured by Brown & Williamson Tobacco Corporation are excluded from entry into the United States for consumption, entry for consumption from a foreign trade zone, and withdrawal from a warehouse for consumption, except if imported by, under license from, or with the permission of the trademark owner, or as provided by law, until such date as the trademarks specified below are abandoned, canceled or rendered invalid or unenforceable:
  - a. Cigarettes and packaging thereof that infringe one or more of the federally-registered U.S. trademarks KOOL + DESIGN (U.S. Reg. No. 508,538), KOOL (U.S. Reg. No. 747,482), KOOL + DESIGN (U.S. Reg. No. 747,490), KOOL + DESIGN (U.S. Reg. No. 2,218,589), LUCKY STRIKE (U.S. Reg. No. 118,372), LUCKIES (U.S. Reg. No. 335,113), LUCKY STRIKE + DESIGN (U.S. Reg. No. 366,744), LUCKY STRIKE + DESIGN (U.S. Reg. No. 404,302), LUCKY STRIKE + DESIGN (U.S. Reg. No. 2,174,493), AN AMERICAN ORIGINAL (U.S. Reg. No. 2,055,297), and INDIAN DESIGN (U.S. Reg. No. 311,961);<sup>1</sup>
  - b. Cigarettes and packaging thereof that dilute the above listed trademarks; or
  - c. Cigarettes and packaging thereof that bear any of the above listed trademarks and falsely represent the trademark owner to be the source of such products.
2. Notwithstanding paragraph 1 of this Order, the aforesaid cigarettes and packaging thereof are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, and withdrawal from a warehouse for consumption under bond in the amount of seven dollars (\$7.00) per carton of such articles pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 13370)), until such time as the President notifies the Commission that he approves or disapproves this action but no later than sixty (60) days after the date of receipt of this Order by the President.
3. Notwithstanding paragraphs 1 and 2 of this Order, the aforesaid cigarettes and packing thereof are entitled to entry into the United States for consumption, without payment of bond, if, upon importation, they accompany a person arriving in the United States and the U.S. Customs Service is satisfied that they are being imported for the arriving person's personal use rather than for commercial purposes.
4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to cigarettes and packaging thereof 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 United States Government.
5. The Commission may modify this Order 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).
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 the U.S. Customs Service.

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<sup>1</sup> A copy of these registrations are attached.

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

By Order of the Commission.

Donna R. Koehnke  
Secretary

Issued: October 16, 2000

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC 20436

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CERTAIN CIGARETTES AND )  
PACKAGING THEREOF )  
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Investigation No. 337-TA-424

**ORDER TO CEASE AND DESIST**

IT IS HEREBY ORDERED THAT PTI, Inc., doing business as Ampac Trading, 1130 Watson Center Road, Carson, California (business address), 520 Kirkland Way, Suite 400, Kirkland, Washington 98033 (address of incorporation), cease and desist from importing, selling for importation into the United States, selling in the United States, marketing, advertising, distributing, offering for sale, transferring (except for exportation), or soliciting U.S. agents or distributors for certain cigarettes and packaging thereof, as described below, in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, except as provided in Section IV.

I.

(Definitions)

As used in this Order:

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

(B) "Brown & Williamson" shall mean Brown & Williamson Tobacco Corporation, 401 South 4th Avenue, Suite 200, Louisville, Kentucky 40202-3426, complainant in this investigation, and its successors and assigns.

(C) "Intervenor" shall mean PTI, Inc. doing business as Ampac Trading, 1130 Watson Center Road, Carson, California (business address), 520 Kirkland Way, Suite 400, Kirkland, Washington 98033 (address of incorporation).

(D) "Person" shall mean an individual, or any nongovernmental partnership, firm, association, corporation, or other legal or business entity other than Intervenor or its majority owned or controlled

subsidiaries, their successors, or assigns.

(E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) "Covered Product" shall mean cigarettes and packaging thereof imported into the United States, that are not imported by, under license from, or with the permission of the trademark owner, or as provided by law, that:

(1) infringe one or more of the federally-registered U.S. trademarks KOOL + DESIGN (U.S. Reg. No. 508,538), KOOL (U.S. Reg. No. 747,482), KOOL + DESIGN (U.S. Reg. No. 747,490), KOOL + DESIGN (U.S. Reg. No. 2,218,589), LUCKY STRIKE (U.S. Reg. No. 118,372), LUCKIES (U.S. Reg. No. 335,113), LUCKY STRIKE + DESIGN (U.S. Reg. No. 366,744), LUCKY STRIKE + DESIGN (U.S. Reg. No. 404,302), LUCKY STRIKE + DESIGN (U.S. Reg. No. 2,174,493), AN AMERICAN ORIGINAL (U.S. Reg. No. 2,055,297), and INDIAN DESIGN (U.S. Reg. No. 311,961);

(2) dilute one or more of the above listed trademarks; or

(3) bear one or more of the above listed trademarks and falsely represent the trademark owner to be the source of such products

until such date as the trademarks specified above are abandoned, canceled, or rendered invalid or unenforceable.

(G) The terms "Import" or "importation" refer to importation for entry for consumption, entry for consumption from a foreign trade zone, and withdrawal from a warehouse for consumption under the Customs Laws of the United States.

(Applicability)

The provisions of this Cease' and Desist Order shall apply to Intervenor and to any of 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, insofar as they are engaging in conduct prohibited by Section 111, *infra*, for, with, or otherwise on behalf of Intervenor.

### III.

#### (Conduct Prohibited)

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

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

(B) sell, market, distribute, offer for sale, or otherwise transfer (except for exportation) in the United States imported covered product;

(C) advertise covered product;

(D) solicit U.S. agents or distributors for covered product; or

(E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered product.

### 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 federally-registered U.S. trademarks KOOL + DESIGN (U.S. Reg. No. 508,538), KOOL (U.S. Reg. No. 747,482), KOOL + DESIGN (U.S. Reg. No. 747,490), KOOL + DESIGN (U.S. Reg. No. 2,218,589), LUCKY STRIKE (U.S. Reg. No. 118,372), LUCKIES (U.S. Reg. No. 335,113), LUCKY STRIKE + DESIGN (U.S. Reg. No. 366,744), LUCKY STRIKE + DESIGN (U.S. Reg. No. 404,302), LUCKY STRIKE + DESIGN (U.S. Reg. No. 2,174,493), AN AMERICAN ORIGINAL (U.S. Reg. No. 2,055,297), and INDIAN DESIGN (U.S. Reg. No. 311,961) 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 period shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2001.

Within thirty (30) days of the last day of the reporting period, Intervenor shall report to the Commission the quantity in units and the value in dollars of covered product that Intervenor has imported and/or sold in the United States during the reporting period and the quantity and value of covered product that remains in inventory 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 may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

## VI.

### (Recordkeeping and Inspection)

(A) For the purpose of securing compliance with this Order, Intervenor shall retain any and all records relating to the importation, 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 purpose 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 Intervenor's principal offices during office hours, and in the presence of counsel or other representatives if Intervenor 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)

Intervenor 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 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 subparagraph VII(B) and VII(C) shall remain in effect until such date on which the trademarks specified in Section I(F) herein are abandoned, canceled, or rendered invalid or unenforceable.

## VIII.

### (Confidentiality)

Any request for confidential treatment of information submitted to or 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, Intervenor 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 Commission Rule 210.75, 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 Intervenor is in violation of this Order, the Commission may infer facts adverse to Intervenor if Intervenor falls 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 Commission Rule 210.76, 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 3370) of the Tariff Act of 1930, 19 U. S. C. § 13370), subject to Intervenor posting a bond with the Commission in the amount of seven dollars (\$7.00) per carton of covered product. 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 is subject to the entry bond as set forth in the general exclusion order issued by the Commission simultaneously herewith, and is not subject to this bond provision.

The bond prescribed in this section 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 Intervenor on appeal, or unless Intervenor 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 Intervenor of an Order issued by the Commission based upon application therefore made by Intervenor to the Commission.

By Order of the Commission.

Donna R. Koehnke  
Secretary

Issued: October 16, 2000