

In the Matter of

CERTAIN MINIATURE PLUG-IN BLADE FUSES

Investigation No. 337-TA-114



USITC PUBLICATION 1337

JANUARY 1983

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

UNITED STATES INTERNATIONAL TRADE COMMISSION

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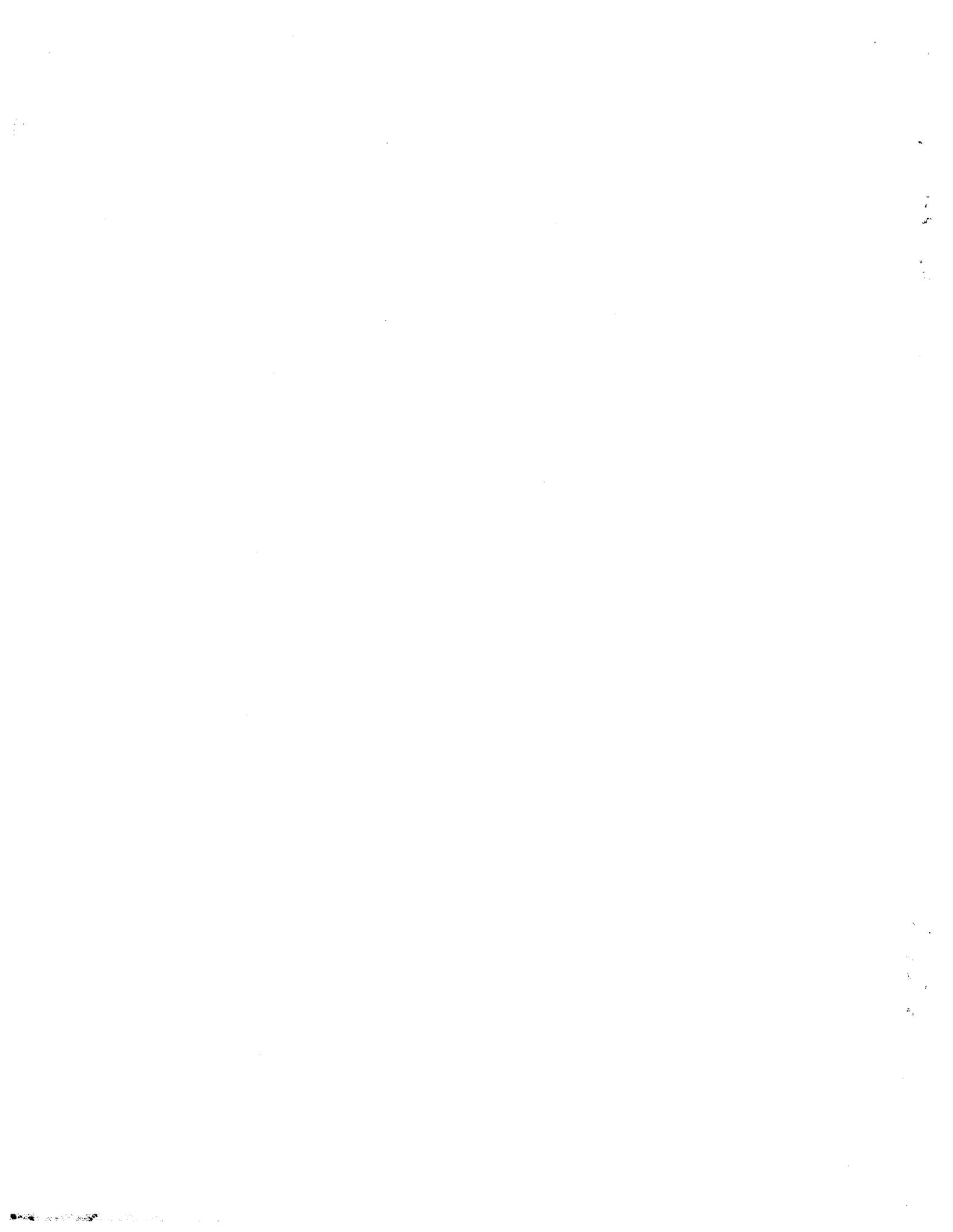
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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of)
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CERTAIN MINIATURE PLUG-IN BLADE FUSES)
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Investigation No. 337-TA-114

COMMISSION ACTION AND ORDER

Introduction

The U.S. International Trade Commission has conducted the above-captioned investigation in order to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 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, the impact that such 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 (d) of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(d));
2. The public-interest factors enumerated in subsection (f) 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 4,056,884, 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

The unfair trade practices in question are the following: 4/

(1) the infringement of--

- (a) claims 7 and 9 of U.S. Letters Patent 3,909,767, (hereinafter the '767 patent) covering a "Miniature Plug-In Fuse",
- (b) claims 2, 3, 6, and 11 of U.S. Letters Patent 4,040,175, (hereinafter the '175 patent) covering a "Method of Making A Miniature Plug-In Fuse With A Fragile Fuse Link",
- (c) claim 17 of U.S. Letters Patent 4,056,884, (hereinafter the '884 patent) covering a "Method of Making A Miniature Plug-In Fuse", and
- (d) claims 1, 2, and 13 of U.S. Letters Patent 4,131,869 (hereinafter the '869 patent) covering a "Plug-In Fuse Assembly Construction",

(2) misrepresentation of the source of origin 5/ of the imported fuses (hereinafter "false representation" or "false designation of origin") and misappropriation of the complainant's trade dress,

(3) passing off the imported fuses as those of the domestic industry, and

(4) false advertising by two foreign companies--Walter Electronic Co., Ltd. and Terng Nan Industrial Corp.

The respondents include three domestic companies--(1) M & T Auto Parts, Long Island City, New York; (2) Speedway Division of North Bend Industries, Los Angeles, California; (3) Interchem Corp., Los Angeles, California--and

4/ This list of unfair trade practices is taken from the notice of investigation, which defines the scope of the Commission's inquiry. 47 Fed. Reg. 1448 (1982).

5/ The issue with respect to misrepresentations by the respondents in this investigation is whether they have misrepresented or failed to designate the geographic origin of their imported fuses in violation of section 304 of the Tariff Act of 1930 (19 U.S.C. § 1304) ("false designation of origin"), or misrepresented the identity of the manufacturer ("false representation") in violation of section 43 of the Lanham Act (15 U.S.C. § 1125). See Certain Log Splitting Pivoted Lever Axes, Inv. No. 337-TA-113, Commission Memorandum Opinion on Motion No. 113-5 to Amend the Complaint and Notice of Investigation (July 2, 1982) at 7, n. 13.

nine foreign companies--(1) David Art & Handicraft Co., Ltd. in Taipei, Taiwan; (2) Fuji Industries, Taipei, Taiwan; (3) Leumark Industrial Co., Ltd., Taipei, Taiwan; (4) Rite Industrial Corp., Taipei, Taiwan; (5) Terng Nan Industrial Corp., Taipei, Taiwan; (6) Tophole Trading Co., Ltd., Taipei, Taiwan; (7) Walter Electronic Co., Ltd., Taipei, Taiwan; (8) Yueh Jyh Metal Industrial Co., Taipei Hsien, Taiwan; and (9) Zeeman Fuse Manufacturing Corp., Taipei, Taiwan. 6/

Littelfuse requests that the Commission issue a general exclusion order barring infringing, deceptively marketed fuses from entry into the United States. 7/

The notice instituting this investigation was published in the Federal Register on January 13, 1982. 8/ Although the domestic respondents were properly served with copies of the notice and complaint, they did not file responses complying with the Commission's Rules of Practice and

6/ As discussed in this opinion, the record shows that there have been instances of importations and sales of the subject imported fuses by companies which are not parties in this investigation. For example, American Chimei Inc., of Douglaston, New York, purchased and imported blade fuses from Sun East International Corp. in Taiwan. CX 101 at 5, 8-9, and 25-29. (Some of those fuses were sold to domestic respondent M & T. CX 97 at 5, 10, 26-27.) Motorcar Parts Associates Inc., of Huntington, New York, purchased the subject fuses from an agent, Tesoro Ent. Co. of Taiwan. CX 93 at 12-13, 15, 42-44. Mid-Ohio Automotive Inc., of Columbus, Ohio, purchased imported blade fuses from Auto-Motive Trading Ltd., an importer in Great Neck, New York. CX 111 at 5-6, 12-13, 30, and 31. Mid-Ohio sells fuses through its retail division, Nationwide Auto Parts Stores. CX 111 at 3-4. We have considered the activities of these companies only for purposes of determining the appropriate relief for the violation that we have found to exist in this case.

7/ The complaint requested that the Commission issue exclusion orders and cease and desist orders enjoining the respondents from selling their existing inventories of the subject merchandise in the United States. Complaint at 39-40. However, during the course of these proceedings, Littelfuse changed its prayer for relief to one general exclusion order. See CBR at 1-2; letter of November 29, 1982 from complainant's counsel, Plaia & Schaumberg, to Chairman Eckes.

8/ See n. 4 supra.

Procedure. 9/ 10/ While these respondents did cooperate in discovery, they did not participate in any other phase of the investigation.

The foreign respondents also failed to file proper responses. 11/ Moreover, they did not cooperate in discovery. After making three unsuccessful attempts to obtain discovery from the foreign respondents, the complainant filed a motion for each of them to be held in default. 12/

At the prehearing conference on June 2, 1982, the ALJ granted the motion as to Fuji on the basis of that company's letter to the IA admitting that it had sold and delivered a substantial number of the accused fuses in the United States. 13/ The motion was denied as to respondents Leumark, Rite, Tophole, Walter, and Zeeman, for lack of similar information concerning those

9/ 19 C.F.R. § 210.21.

10/ Respondent Speedway filed no response of any kind. Respondent M & T filed a notice entering the appearance of counsel and stating that it waived discovery and would not be represented at the preliminary conference. Respondent Interchem filed a motion and supporting affidavit seeking to be terminated from the investigation on the grounds that (1) it neither imported nor sold the fuses in question and (2) it would not do so in the future. Motion No. 114-1. The complainant made a preliminary showing that it intended to prove that Interchem was engaged in a practice falling within the scope of the notice of investigation, and the motion was denied. Order No. 4.

11/ No response of any type was received from foreign respondents David Art, Leumark, Rite, Terng Nan, Tophole, Yueh Jyh, and Zeeman. Fuji and Walter, however, responded indirectly.

Fuji sent a letter to the IA which: (1) acknowledged receipt of the complaint and notice of investigation, (2) stated that Fuji is not a manufacturer of plug-in blade fuses, and (3) admitted that Fuji had exported and sold such fuses to K Mart Corp. without knowledge of the patents. Fuji in its letter went on to explain that upon learning of the possible infringement, K Mart advised Fuji to stop further shipment of the imported fuses. The letter declared that it would not ship or sell such fuses in the future. CX 26.

Walter wrote a letter to the complainant admitting the use of a drawing of a Littelfuse blade fuse in a Walter advertisement offering fuses for sale. However, Walter denied engaging in false advertising or any other unfair practice in violation of section 337. The letter concluded with a request that Littelfuse withdraw the allegations with respect to Walter. CX 29.

12/ Motion No. 114-6.

13/ PHT at 7-8. See n. 11, supra.

companies. 14/ The motion also was denied as to Yueh Jyh since the information concerning that company was not sufficient for a finding of default. 15/ The ALJ did not expressly grant or deny the motion insofar as it concerned David Art. 16/

The evidentiary hearing before the ALJ was held June 2-4, 1982. The complainant and the IA were the only parties who appeared. In the RD issued on July 22, 1982, the ALJ recommended that the Commission--

- (1) dismiss Interchem "because there was no evidence that Interchem had engaged in an unfair act in connection with the importation or sale of imported blade fuses which tended to injure substantially the domestic industry" 17/ and
- (2) find that "there are unfair practices in connection with the unauthorized importation of blade fuses into the United States the effect or tendency of which is to injure substantially a domestic industry which is efficiently and economically operated. . . ." 18/

On July 28, 1982, the RD and the record upon which it was based were certified to the Commission for a final determination. 19/

The public hearing before the Commission was held on October 13, 1982. Again, the only participants were the complainant and the IA. On November 22,

14/ PHT, supra.

15/ Id.

16/ The ALJ's only comment concerning David Art was that she previously had found that the Commission had jurisdiction over that company. (See Order No. 8.) Id. at 8.

17/ Erratum to the RD at 36. See also n. 10, supra, concerning Interchem's motion to be dismissed from the investigation.

18/ Erratum, supra.

19/ Id. at 37.

1982, the Commission unanimously determined that there is a violation of section 337 of the Tariff Act of 1930 in the importation of certain miniature plug-in blade fuses into the United States, and in their sale, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States. On December 1, 1982, the Commission unanimously determined that: (1) the most appropriate remedy for the violation found to exist is a general exclusion order; 20/ (2) public interest considerations do not preclude relief; 21/ and (3) the bond during the Presidential review period should be set at 90 percent of the entered value of the articles concerned. 22/

Default

The effect of granting a motion for default is to authorize the presiding officer to create certain procedural disabilities for the defaulting party and to entertain, without opposition, proposed findings and conclusions based upon substantial, reliable, and probative evidence, which would support a recommended determination or an initial determination. A complainant is not permitted to rely solely upon the allegations in its complaint to support an affirmative determination that section 337 has been violated. 23/

Although the ALJ expressly held only one respondent in default, this investigation is a de facto default case nevertheless, since no respondent has

20/ 19 U.S.C. § 1337(d).

21/ Id.

22/ See 19 U.S.C. § 1337(g).

23/ Certain Rotary Scraping Tools, Inv. No. 337-TA-62, USITC Pub. 1027 (Jan. 1980) at 7; Certain Novelty Glasses, Inv. No. 337-TA-55, USITC Pub. 991 (July 1979) at 5; Certain Attache Cases, Inv. No. 337-TA-49, USITC Pub. 955 (Mar. 1979) at 9-10; Certain Electric Slow Cookers, Inv. No. 337-TA-42, USITC Pub. 994 (Aug. 1979) at 6.

filed a response conforming to the Commission's rules or participated actively in these proceedings. In such cases, the Commission is required to determine (1) whether it has jurisdiction over the res which is the subject of the proceedings 24/ and, (2) whether the complainant has made a prima facie case of the violation of section 337 by presenting substantial, reliable, and probative evidence to support its allegations. 25/ For the reasons that are set forth below, we find that the Commission has such jurisdiction and that the complainant has met its burden.

Jurisdiction

We find that the Commission has jurisdiction over certain miniature plug-in blade fuses imported into or sold in the United States by domestic respondents Interchem, M & T, and Speedway and by foreign respondents David Art and Fuji. 26/

The facts discussed below establish the Commission's jurisdiction over the merchandise of the domestic respondents. Respondent Interchem, a distributor of automotive supplies, obtained a few samples of the subject fuses from Sun East International Corp. in Taiwan and imported them into the United States. 27/ Interchem subsequently used those samples in an attempt to solicit sales from a Littelfuse customer, -----C-----
-----C-----. 28/ Respondent M & T, a distributor of auto parts, purchased the subject fuses from an importer, American Chimei, Inc. of Douglaston, New York,

24/ It is fundamental in the law that a default judgment is not valid unless the forum has such jurisdiction. *Williams v. North Carolina*, 325 U.S. 226 (1975).

25/ N. 23, supra.

26/ *Sealed Air Corp. v. U.S. International Trade Commission*, 209 U.S.P.O. 469 (C.C.P.A. 1981).

27/ CX 98 at 6-8 13, 28. See also CX 100 at 5 and Exh. 1.

28/ CX 100 at 5 and Ex. 1; CX 98 at 13-14.

which had obtained them from Sun East International Corp. in Taiwan. 29/
Respondent M & T resold some of the imported blade fuses in the United
States. 30/ Speedway, a distributor of automotive supplies, imported fuses
purchased from a Taiwanese trading company, GIHO Corp., and then sold those
fuses in this country. 31/

There is also an adequate basis for the Commission to exercise its
jurisdiction over the merchandise of foreign respondents David Art and Fuji.
David Art, believed to be a manufacturer and exporter of fuses, sold and
delivered imported blade fuses to Narda Inc. in Saddlebrook, New Jersey. 32/
Fuji, a trading company, sold and delivered to K Mart Corp., a large
Littelfuse customer, accused fuses that had been obtained from Ming Kon
Industries Co., Ltd. 33/

The information on the record is not sufficient however to establish
jurisdiction over the merchandise of the seven other foreign respondents 34/
since there is no evidence that those companies have imported or sold the
subject fuses in the United States. 35/

The Product and the Domestic Marketplace

In 1976, Littelfuse introduced its miniature plug-in blade fuse as a
replacement for the glass cartridge fuse for use in the new smaller

29/ N. 6, supra.

30/ CX 97 at 21.

31/ CX 99 at 6, 10, 31-34, 50-67, 69.

32/ CX 31, Schedule A.

33/ CX 27, Attachments A and B; CX 26.

34/ Those respondents are Leumark, Rite, Terng Nan, Tophole, Walter, Yueh
Jyh and Zeeman.

35/ See ICET at 527-535, 571-572; CX 8 through CX 13; CX AY at 2; CBR, Fxh.
A; CX 99 at 16-17, 69.

automobiles introduced by General Motors in that year. 36/ Littelfuse subsequently acquired the '767 and '869 patents covering its newly-developed blade fuses and the '175 and '884 patents covering the processes by which such fuses are manufactured. 37/ The sole domestic licensee under the patents is the Bussman Division of McGraw-Edison Co. 38/ Littelfuse markets the patented fuses under the trademarks "Autofuse" and "ATO"; Bussman markets its fuses under the trademark "ATC". 39/

There are two distinct markets for the subject fuses. 40/ The first consists of the original equipment manufacturers (OEM), which are the four largest domestic automakers and their direct suppliers of parts and equipment. 41/ The blade fuses that the OEMs install in their vehicles as original equipment are purchased exclusively from Littelfuse and Bussman. 42/ The second market is the automotive aftermarket, which is comprised of companies that purchase the subject fuses for sale on a replacement basis. 43/ It is in the aftermarket that the imported fuses are being sold. 44/

36/ ET at 36-37; CX 40; CX 104; CX M.

37/ CX 1; CX 32; CX 33; CX 4; CX 36; CX 2; CX 34; CX 3; CX 35.

38/ ET at 54; CX 102 at 3-4, 6; CX 103 at 5, 34-36.

39/ ET at 11; ICET at 60, 512, 513; CX 100 at 9, 10; CX 102 at 10; CX 103 at 24-26, 47-51, Exhs. 2-5.

40/ CX 103 at 4.

41/ ICET at 52; ET at 91, 169-170; ICET at 380-420; CX 6.

42/ This is because the domestically-produced patented fuses are the only blade fuses on the market which are known to satisfy the specifications of the OEMs. ET at 37; ICET at 54-55; CX 6; CX 103 at 12. In addition, the domestic blade fuses are manufactured in accordance with the strict specifications provided by the Society of Automotive Engineers, Inc. (SAE) and have been tested by the Underwriters Laboratories (UL) and evaluated as meeting their specifications. ET at 37, 91; CX 5; CX 94 at 10; ICET at 54-55; CX 103 at 12.

43/ CX 103 at 4, 31-32; ICET at 53-54, 426-430.

44/ CX 103 at 12; ET at 497.

Unfair ActsPatent Infringement

The complainant chose to rely on the statutory presumption that patents are valid 45/ and did not proffer evidence concerning the validity of the patents in issue. In view of the absence of any evidence rebutting the presumption, we find that each patent is valid. 46/ 47/

The test for determining whether an accused article infringes a patent was set forth in Graver Tank. 48/

In determining whether an accused device or composition infringes a valid patent, resort must be in the first instance to the words of the claim. If accused matter falls clearly within the claim, infringement is made out and that is the end of it. 49/

'767 Patent

The '767 patent covers an invention entitled "Miniature Plug-In Fuse." 50/
The asserted claims are 7 and 9. Claim 7 reads as follows:

A plug-in fuse assembly consisting solely of a housing made of insulating material and a plug-in fuse element secured within said housing, said housing being a synthetic plastic member which is open at the inwardly facing side thereof for the full width of the plug-in fuse element so as initially to receive said plug-in fuse element when it is assembled therewith, said housing and

45/ 35 U.S.C. § 282. Any party challenging the validity of a patent has "a heavy burden of demonstrating by clear and convincing proof a prior use or sale of the patented invention or the patent's deficiency in some other respect." Paeco, Inc. v. Applied Moldings, Inc., 562 F.2d 870, 872 (3rd Cir. 1977).

46/ The IA apparently did not find reason to challenge the validity of the suit patents.

47/ In accord, RD at 7. See Rotary Scraping Tools, supra at 9.

48/ Graver Tank & Mfg. Co., Inc. v. Linde Air Products Co., 339 U.S. 605, 607 (1950).

49/ Id. at 607.

50/ CX 1.

plug-in fuse element having interlocking means for securing the plug-in fuse element within the housing, said plug-in fuse element being made entirely of a fuse metal and comprising a one piece element having a pair of terminal-forming blade portions to be received by pressure clip terminals in a mounting panel, the terminal-forming blade portions having current-carrying extensions at the inner end portions thereof which are interconnected by a fuse-forming link portion of much smaller cross-sectional area than said terminal-forming blade portions and said current-carrying extensions, said terminal-forming blade portion of said plug-in fuse element being exposed on the outside of said housing, and said housing forming an insulated gripping body for the plug-in fuse assembly and a shield for spewing blown fuse metal of said fuse-forming link portion of the plug-in fuse element when the current rating therefore is exceeded.

Claim 9 reads as follows:

The plug-in fuse assembly of claim 7 wherein said terminal-forming blade portions of the plug-in fuse element extend generally in spaced parallel coplanar relation with one another, said current-carrying extension thereof and said fuse-forming link portion; and the housing has an outer wall positioned opposite the fuse-forming link portion of the plug-in fuse element and facing in the opposite direction from the direction in which said terminal-forming blade portions of the plug-in fuse element extend, said outer wall forming at least part of a shield preventing the outward spewing of fuse metal under fuse blowing current conditions.

For the reasons set forth by the ALJ, we find that each of the domestic respondents--Interchem, M & T, and Speedway--and one foreign respondent, David Art, have infringed claims 7 and 9 of the '767 patent by exporting to the United States, importing, or selling imported blade fuses corresponding to the structures disclosed in those claims. 51/ 52/

51/ In accord, RD at 6-7.

52/ For the reasons set forth by the ALJ, we also find that the asserted claims of the '767 patent have been infringed in the importation or sale of such fuses by five companies that are not parties to the investigation: (1) American Chimei Inc., (2) Narda Inc., (3) Motorcar Parts Associates, Inc., (4) K Mart Corp., and (5) Mid-Ohio Automotive, Inc. In accord, RD at 7.

'175 Patent

The '175 patent covers an invention entitled "Method of Making A Miniature Plug-In Fuse With Fragile Fuse Link." 53/ The asserted claims are 2, 3, 6, and 11. Claim 2 reads as follows:

A method of making a plug-in fuse assembly comprising a plug-in element including a pair of terminals to be received by pressure clip terminals or the like, and a fuse-forming link forming at least part of an interconnection between the terminals, said method comprising the steps of providing a blank of fuse metal which is blanked to contain a pair of terminals which are interconnected by a rigid web, and a relatively weak fuse-forming link portion forming at least part of an interconnection between said terminals, anchoring across the portion of the blank interconnected by said fuse-forming link a body of insulating material forming a rigid interconnection therebetween, with the pair of terminals interconnected by the web on the outside of the body of the insulating material, and blanking the web of fuse metal interconnecting the terminals.

Claim 3 reads as follows:

The method as defined in claim 2 wherein the blank of fuse metal is initially provided with a portion of reduced thickness so that, when the blank is blanked, the interconnecting fuse-forming link portion of the blank is of less thickness than the terminals.

Claim 6 reads as follows:

The method as defined in claim 3 wherein the blank has interlock openings, and wherein the body of insulating material is staked into the interlock openings in the blank for securing the blank to the insulating body.

Claim 11 reads as follows:

The method of making a plug-in fuse assembly comprising a plug-in element including a pair of juxtaposed spaced parallel terminals to be received by pressure clip terminals or the like and current carrying extensions at the inner end portions of the current carrying extensions,

said method comprising the steps of providing a continuous strip of conductive material, sequentially advancing the continuous strip, blanking said continuous strip to provide at spaced intervals in said strip longitudinally interconnected blanks each comprising a pair of juxtaposed spaced parallel terminals extending longitudinally along the strip and interconnected by a rigid web extending laterally across the strip and current carrying extensions of the terminals extending longitudinally along the strip, providing also relatively weak fuse-forming links extending between said current carrying extensions, severing end blanks from the strip and anchoring between the current carrying extensions of each blank rigid insulating means which forms a rigid interconnection therebetween, with the pair of terminals of each blank extending from the insulating means, and blanking the web of the strip interconnecting the terminals.

The use of a process in a foreign country which would infringe the claims of a U.S. process patent if the process were practiced in the United States constitutes an unfair practice under section 337a if the foreign article manufactured according to the patented process is imported into the United States. 54/

We find that the process used to make the imported fuses of domestic respondents M & T and Speedway, and foreign respondent David Art would have infringed claims 2, 3, 6, or 11 of the '175 patent if the same process were used in the United States. 55/ 56/

'884 Patent

The '884 patent covers an invention entitled "Method of Making a Minature Plug-In Fuse." 57/ Claim 17 is the only claim at issue. It reads as follows--

54/ 19 U.S.C. § 1337a.

55/ We adopt the reasoning of the ALJ. See RD at 7-9.

56/ We also find that the process used to make the imported fuses of non-party Narda, whose fuses were supplied by David Art, would have infringed claims 2, 3, 6, or 11 of the '175 patent if the same process were used in the United States. In accord, RD at 7-9.

57/ CX 3.

The method of making a plug-in fuse assembly comprising a plug-in element having a pair of spaced terminals to be received by pressure clip terminals or the like, current-carrying extensions at the inner end portions of the pair of terminals and a fuse link between said current-carrying extension, and a housing of insulating material, said method comprising the steps of providing a continuous strip of fuse metal, sequentially advancing the continuous strip, blanking said continuous strip after it is sequentially advanced to provide at spaced intervals in said strip longitudinally interconnected blanks each containing a pair of spaced terminals, current-carrying extensions at the inner end portions of the pair of terminals and a fuse link between said current-carrying extension, severing the end blanks from the strip, and applying and securing over each end blank a housing of insulating material with the current-carrying extensions and the fuse link of the end blank within the housing and with the pair of terminals of the end blank extending outwardly from the housing, said housing closely enveloping said current-carrying extensions but being spaced from said fuse link.

We find that the process used to make the imported fuses of domestic respondents M & T and Speedway would have infringed claim 17 of the '884 patent if the same process were used in the United States. 58/ 59/ The ALJ concluded that the step of severing the end blank must precede the step of applying the housing in order to constitute infringement. 60/ Complainant Littelfuse took exception to this conclusion arguing that even though the patent discloses an exemplary process, the patent expressly indicates that this sequence is merely a preferable sequence and is not intended to limit the claim. Additionally, Littelfuse maintained that, if the claim were

58/ In accord RD at 10-11, except to the extent discussed above.

59/ We also find that the process used to manufacture the imported fuse of non-parties American Chimei and Narda would have infringed claim 17 of the '884 patent if the same process were used in the United States.

60/ RD at 10-11.

61/ See CX 3.

intended to be limited in the manner described by the ALJ, the word "then" would have preceded the step of securing the housing over the end blank. Finally, Littelfuse argued that regardless of whether the housing is applied to the end blank before or after the severance of the end blank from the fuse metal strip, the claim still should be interpreted to be infringed by either direct readability of the claim on the imported fuses or application of the doctrine of equivalents.

The language of the patent expressly provides that "[p]referably, the placing of the housing 6 over the end blank 4" and securing the housing to the end blank occurs before severing the end blank from the strip at the blank." 62/ However, the patent also provides:

While for purposes of illustration herein one preferred specific method of making the plug-in fuse assembly has been disclosed herein, other methods may become apparent to those skilled in the art and therefore this invention is to be limited only by the scope of the appended claims. 63/

Consequently, we agree with the complainant concerning the sequence of the application of the housing. Therefore, we find that claim 17 is literally infringed where all the elements of the claim are present in the fuse, regardless of whether the step of securing the housing over the end blank occurs prior or subsequent to the severing of the end blank from the strip.

'869 Patent

This patent covers an invention entitled "Plug-In Fuse Assembly Construction." 64/ The asserted claims are 1, 2, and 13. Claims 1 reads as follows--

62/ CX 3, Col. 8, lines 22-26.

63/ CX 3, Col. 8, lines 40-45.

64/ CX 4.

A high current plug-in fuse assembly comprising: a plug-in fuse element including a pair of laterally spaced generally parallel confronting terminal portions, the terminal portions having current-carrying extensions projecting longitudinally from the inner end portions thereof and which are interconnected by a fuse link made of fuse metal, said fuse link extending between said current-carrying extensions at points much closer to said terminal portions than to the outer ends of said current-carrying extensions, and an insulating body rigidly anchored between said current-carrying extensions and made of a material which has a relatively low melting temperature in comparison to the blowing temperature of the fuse link of said plug-in fuse element, said insulating body being substantially spaced from said fuse link portion of said plug-in fuse element.

The plug-in fuse assembly of claim 1 wherein said insulating body is anchored to said current-carrying extensions by portions of said insulating body deformed into anchoring apertures in said current-carrying extensions, said fuse link of said plug-in fuse element making connection with said current-carrying extensions at points thereof located on the terminal portion side of all of said apertures, whereby the cross-sectional area of the portions of said current-carrying extensions which carry current between said fuse link and terminal portions of said plug-in fuse elements is not reduced by said apertures.

Claim 13 reads as follows:

A plug-in fuse element comprising: a pair of spaced confronting generally parallel terminals, a pair of confronting current-carrying extensions projecting longitudinally from the inner ends of the pair of terminal portions and a fuse link made of fuse metal extending transversely between the confronting margins of said current-carrying extensions, said fuse link having a configuration undulating in a plane generally coplanar or parallel to a plane containing said terminals and current-carrying extensions, the major portion of the length of such undulating fuse link being parallel to the length of the current-carrying extensions to provide a relatively large resistance of a given limited spacing between said current-carrying extensions.

We agree with the ALJ's conclusion that claims 1 and 2 have been infringed by the fuses of respondents David Art and Fuji and that claim 13 has been infringed by domestic respondents Interchem, M & T, and Speedway. 65/ However, we disagree with the ALJ's finding that only imported fuses over 20 amps are covered by claims 1 and 2. 66/

We find that the imported fuses of 10 amps or more infringe the asserted claims of the '869 patent under the doctrine of equivalents, which allows a patent owner to hold as an infringement a product or process that does not correspond to the literal terms of the claims of a patent, but performs substantially the same function in substantially the same way to obtain the same result. 67/

The fuse links in the present design of Littlefuse's 10, 15, 20, 25 and 30 amp fuses and the fuse links in all of the imported fuses are connected between the inner end portions of the current-carrying extensions on the side of the anchoring apertures nearest the terminal blades, as required by claims 1 and 2, so that no measurable heat producing current will flow in the apertured portions of the current-carrying extensions. 68/ The apertured part of the current-carrying extensions are higher resistance sections where heat should not be produced. 69/ While the '869 patent discloses this construction for fuses of 25 and 30 amp, the fuses of lower amperage ratings were therein disclosed with their fuse links on the outside, rather than on the terminal

65/ We concur with the ALJ's findings and reasoning with respect to to claim 13. See RD at 11-12.

66/ We also find that the fuses of non-parties American Chimei, K Mart, and Narda infringe claims 1 and 2 of the '869 patent. In accord, RD at 11-12.

67/ Graver Tank, supra at 608.

68/ CX Q, 26.

69/ ET at 131-132; CX Q; CX AR.

blade side of the anchoring apertures where the current flows through the apertured portion of the fuse in order to reach the fuse link. We find that this disclosure in no way limits claims 1 and 2 to fuses of 25 amps or more. Testimony in the record indicates that fuses having an amperage rating of about 10 amps and higher are considered higher current fuses in the automotive fuse art. 70/

Trade Dress

An unlawful copying of trade dress occurs where (1) one party copies the non-functional features of a product of another, (2) the features are "either distinctive as a designation of origin or have otherwise obtained a secondary meaning," and (3) there is a resulting likelihood of confusion as to the source of the subject articles. 71/ The Commission has required proof of each of these elements before finding that use of the same, or a confusingly similar trade dress, is an unfair act or unfair method of competition. 72/

70/ ET at 225-226. At the time the application which resulted in the '869 patent was written, the construction of claims 1 and 2 to prevent overheating in the apertured portions of the current-carrying extensions was not used in the complainant's 5-20 amp fuses. The complainant now uses the fuse construction recited in claims 1 and 2 of the '869 patent in its 10-20 amp fuses (CX 45), which are considered to be high current fuses in the fuse art. The respondents could have placed the fuse links between the outer ends of the current-carrying extensions beyond the apertures therein; however, they chose to place these fuse links exactly as called for in claims 1 and 2. This placement accomplishes the functional objective of the subject matter of claims 1 and 2, namely to minimize heating in portions of the fuse spaced from the fuse links. Since there is no specific statement in '869 fuse that fuse apertures between 10 and 20 amp are not high current fuses, we think that the patent should be read in conjunction with the testimony of record that fuses of 10 amps or greater are considered high current fuses in the fuse art.

71/ Certain Novelty Glasses, Inv. No. 337-TA-55, USITC Pub. 991 (July 1979) at 7. See also 3 Callman, Unfair Competition, Trademarks and Monopolies, (hereinafter "Callman") § 77.4(e)(5) at 413.

72/ Novelty Glasses, supra; see also Certain Pump Top Insulated Containers, USITC Pub. 1010 (Nov. 1979) at 6, n. 20.

1. Nonfunctional Design Features

Nonfunctional design features are the features of a product or its packaging which are basically arbitrary and do not serve any particular purpose except to distinguish the product from others. 73/ We find that the information on the record establishes that four of the five features cited by the complainant are wholly nonfunctional as claimed.

First, the rectangular shape of the head of the housing on the Littelfuse and Taiwanese fuses serves no particular purpose. Testimony in the record reveals that any shape would be adequate as long as the overall dimensions are within the limits prescribed by the Society of Automotive Engineers (SAE). 74/ Bussman fuses, for example, have rounded or tapered heads. 75/

Second, the two-step tapering side profile of the Littelfuse and Taiwanese fuse housings also serves no particular purpose. Since the cavities in the fuse block wherein the fuses are inserted would accept fuses having different profiles, it does not facilitate insertion of the fuses. 76/ Bussman fuses, for example, have a different (one-step) profile. 77/

Third, the full length extension of the rib on each side of the housing on the Littelfuse and imported fuses is not functional. Since the patented domestic fuses installed as original equipment in new vehicles are inserted by high-speed automatic equipment on the assembly line, some type of extension along the sides of the housing is necessary solely for the purpose of accomodating the OEM's high automation. 78/ There is no similar requirement

73/ Novelty Glasses, supra at 7.

74/ ET at 177, 182. See also n. 42, supra.

75/ CX AR; CX D; ET at 174-175.

76/ ET at 181-182.

77/ CX AR; CX D; CX 46; ET at 180.

78/ ET at 179.

for manual insertion of the fuses by mechanics or consumers. 79/ However, a rib that extends the full length of the side of the housing is not required. Bussman fuses, which also are sold to the OEMs, have short ribs on the housing sides. 80/

Fourth, the wide center sections of the Littelfuse and Taiwanese fuse housings have a generally rectangular opening at the bottom. There is no need for such an opening at the bottom of the fuse, much less one that is rectangular. 81/ Bussman's fuses do not have such openings. 82/

As to the fifth feature found in the Littelfuse and Taiwanese fuses--the lip at the head of the fuse projecting on all sides of the housing 83/--we find that it is functional in part. The lip facilitates removal of the fuse, whether it is done by machine or manually. 84/ However, the lip also is non-functional in part since it extends the full length of the top portion or head of the fuse. 85/ A person removing the fuse by device (OEM) or by hand (the aftermarket) would tend to grasp only the center area of the lip. Thus a full length lip is not required. 86/

The mere fact that a design serves some function will not render it legally functional if the design is arbitrary and there are alternative designs which would serve the same purpose. 87/ Those circumstances exist in

79/ ET at 178-179.

80/ CX AR; CX D.

81/ ET 177, 182.

82/ CX 103 at 17.

83/ Littelfuse maintains that this feature is distinctive and nonfunctional in the aftermarket. See Post (Evidentiary) Hearing Brief of Complainant Littelfuse, Inc. at 34-36.

84/ ET 177.

85/ CX 17; ET 177-178.

86/ ET 178.

87/ Certain Steel Toy Vehicles, Investigation No. 337-TA-31, USITC Pub. 880 (April 1978) at 29. It also has been held that a feature is non-functional if the feature is not primarily or substantially functional. Audio Fidelity, Inc. v. High Fidelity Recordings, Inc., 283 F.2d 551, 555 (9th Cir. 1960).

the case at hand; another design would serve the same purpose of facilitating removal of the fuse. The lip on the Bussman fuse is a raised projection in only the center of the head; it does not extend to the far extremes. 88/

A feature is nonfunctional if it is not primarily or substantially functional. 89/ Thus, even if the features of the patented fuses and the infringing imports are considered to have some functional purpose, we find that they still are entitled to protection under the law.

2. Secondary Meaning

We find that the relevant features are not inherently distinctive and we therefore turn to secondary meaning. Secondary meaning exists when the public associates a particular trade dress (e.g., color, shape, size, content, etc. of a product or its packaging) with certain products and associates them with a single source. It is not necessary that the identity of the source be known. 90/

There is information on the record of extensive advertising displaying the features in question, which is probative of secondary meaning. 91/ The complainant's fuse design was unique when it was introduced in 1976. 92/ For that reason, Littelfuse developed and disseminated extensive promotional material explaining the miniature plug-in blade fuse and identifying it as a Littelfuse product. 93/

88/ CX D; ET 178.

89/ Auto Fidelity, supra at 559; 1 McCarthy, § 8.6 (1973).

90/ Novelty Glasses, supra at 7; Union Carbide Corp. v. Ever-Ready Inc., 531 F.2d 365, 380 (7th Cir. 1976), cert. denied, 429 U.S. 830 (1976); Blisscraft of Hollywood v. United Plastics Co., 294 F.2d 694, 697 (2d Cir. 1961).

91/ CX 37; CX 38; CX 40; CX 104; CX 105; CX 106.

92/ See CX M; compare CX X and CX AW.

93/ N. 91 supra.

The record shows that the non-functional design features of the imported fuses duplicate the Littelfuse blade fuse housings even though other designs could have been used. 94/ Such similarity in appearance gives rise to a presumption of secondary meaning. 95/

The respondents' actions in this case demonstrate their intent to deceive the public and thus give rise to a presumption of secondary meaning. The record contains evidence that there have been instances where respondents have used trademarks associated with the domestic industry, namely Littelfuse's "ATO" designation (and Bussman's "ATC" mark) on their imported merchandise. 96/ Additionally, respondent Speedway has used a picture of a Littelfuse blade fuse in advertising its products. 97/ And respondents M & T, Fuji, and David Art have passed off their imported fuses as Littelfuse products. 98/

Thus, we find that secondary meaning has been established in the nonfunctional design features of the Littelfuse blade fuse.

3. Likelihood of Confusion

The record shows that there is a likelihood of confusion concerning the source of the imported fuses. All of the accused fuses are virtually indistinguishable from Littelfuse's fuses and they are similar in appearance

94/ CX AR; ET 174-179; CX 17; CX 46; CX 196.

95/ RJR Fords, Inc. v. White Rock Corp., 603 F.2d 1058, 1060 (2nd Cir. 1979); Parrot Jungle, Inc. v. Parrot Jungle, Inc., 512 F. Supp. 266, 270 (S.N.D.Y. 1981); Clairol, Inc. v. Andrea Cosway, Inc., 184 U.S.P.Q. 583, 586 (C.D. Cal. 1974); Certain Novelty Glasses, supra.

96/ See infra discussion on trademark infringement at 24-28 and discussion on passing off at 28-29.

97/ CX 99 at Exh. 34; CX 29. See also ET at 542-543, 574.

98/ See infra discussion on passing off at 28-29.

to Bussman's fuses. 99/ In addition to having an infringing construction and duplicating the non-functional features of the Littelfuse blade-fuse housings, many of the Taiwanese blade fuses have the same color coding utilized by Littelfuse and by Bussman for various ampere ratings. 100/

None of the subject fuses have any marking that identifies either the manufacturer or the country of origin. 101/ The likelihood of confusion as to the identity of the manufacturer is increased by the absence of such markings. Moreover, most of the packaging in which the accused fuses are sold also fails to identify the manufacturer of the fuses or their country of origin. 102/ In addition, the fact that the respondents' fuses are sold under Littelfuse's "ATO" or "Autofuse" trademarks or Bussman's "ATC" trademark would tend to confuse consumers as to the source of the merchandise so marked. 103/ Speedway used drawings of a Littelfuse blade fuse in advertisements offering its imported fuses for sale. 104/ Further, there is testimony in the record that two Littelfuse employees at a trade show actually confused the imported fuses with Littelfuse blade fuses. 105/ The ALJ pointed out that if Littelfuse employees were confused by the imported fuses, it is even more likely that a retail customer would be confused by the imported fuses. 106/

99/ ET at 174, 179-180; CX AR. Compare CX C and CX D with CX A; CX B; CX6B'; CX B", and CX E.

100/ See CX AR.

101/ See CX 97 at 10-11; CX B'; CX 98 at 2, 13, CX 100 at 9; CX 99 at 57; CX A ; CX AR; CX H; CX I; CX I'; CX I"; CX L; CX AC; CX AF; CX AH; CX AS; CX B"; CX E; *infra* n. 145.

102/ *Id.*

103/ See *infra* discussion on trademark infringement at 24-28.

104/ ET at 543; CX 29.

105/ ICET at 524-525.

106/ RD at 21.

In sum, inasmuch as the features cited are nonfunctional and have acquired a secondary meaning, we find (1) that the complainant has made a prima facie case of simulation or unlawful copying of the complainant's trade dress and (2) that domestic respondents Interchem, M & T, and Speedway, and foreign respondents David Art and Fuji, have imported into, or sold, fuses in the United States which simulate Littelfuse's trade dress.

Trademark Infringement 107/

A trademark is defined in the Lanham Act as any word, name, symbol, or device, or any combination thereof, adopted and used by a manufacturer or a merchant to identify his goods and to distinguish them from those manufactured or sold by others. 108/ This is also the traditional definition of a common-law trademark. 109/. A trademark indicates origin or ownership, guarantees quality or constancy, and entitles the owner to advertise goods bearing the mark. 110/

In order to prove that it has a common law trademark, the complainant must show that (a) they have the right to use the mark, (b) that the mark is inherently distinctive or has acquired a secondary meaning, (c) that the mark has not acquired a generic meaning, and (d) that the mark is not primarily functional. To prove infringement of that trademark, the complainant must prove that there is a likelihood of confusion among consumers who see competing products with a similar appearance. For protection under section

107/ Under misappropriation of trade dress, the complainant apparently intended to allege trademark infringement and we will treat it as such. The ALJ similarly treated the misappropriation charge in part as trademark infringement. See RD at 14-21.

108/ 15 U.S.C. § 1127.

109/ See 3 Callman, supra at 2.

110/ Id. at 3.

337, a common law trademark must meet these same criteria. 111/ Thus, the same elements that are required to establish a prima facie case of simulation of trade dress are also required to prove trademark infringement. 112/ Littelfuse claims "ATO" and "Autofuse" as its trademarks. "Autofuse" is a registered trademark. 113/ The complainant has filed a trademark registration for "ATO". 114/ Littelfuse stamps its name on the top of the fuse housing and uses its "ATO" and "Autofuse" designations in all its advertising and on the packages in which the fuses are sold. 115/ Russman stamps "BUSS" on the side of its fuses and markets them under the trademark "ATC." 116/ "ATO" and "ATC" are arbitrary and distinctive symbols because they are not descriptive; secondary meaning therefore is presumed. 117/ On the other hand, the designation "Autofuse" is descriptive, thus, secondary meaning must be shown.

The complainant has spent large sums for advertising and promoting its fuses under its trademark "Autofuse" for more than five years. 118/ Both the promotional material and the packaging used by the complainant specifically identify the "Autofuse" fuse as a Littelfuse product. 119/

The length of time that a trademark has been used and the market's acceptance of the product also are probative of the question of secondary

111/ Id., Novelty Glasses, supra.

112/ Barnes, supra.

113/ ICET at 513-514.

114. Id.

115/ Id. See CX 38; CX 40; CX 104; CX 106; CX AN.

116/ CX 103 at 17, Exh. 2-5; CX D; CX 102 at 10.

117/ Novelty Glasses, supra.

118/ ICET at 60, 438-446, 448-459, 464-469, CX 37; CX 38; CX 104-CX 106.

119/ ICET at 442-449, 454-456, 459-460; CX 38; CX 40; CX 104; CX 106; CX AN.

meaning. 120/ The Littelfuse plug-in blade fuses were introduced in 1976 under the "ATO" and "Autofuse" trademarks, more than five years before the subject fuses appeared on the market. 121/ Bussman has been selling its "ATC" fuses since 1977. 122/

Since the introduction of the blade fuse in 1976, Littlefuse has always marketed that fuse in conjunction with the Littelfuse name and the registered "Autofuse" trademark. 123/ The press releases and promotional literature used by the complainant in introducing the fuse are examples of such marketing. 124/

There have been several instances where the respondents have marketed their fuses as "ATO", "Autofuse", or "ATC" fuses. Speedway, for example, identified its imported blade fuses in each of its advertising brochures as "ATC" fuses. 125/ When customers placed orders for "ATC" fuses, those orders were filled with the imported fuses identified on the invoices and the packaging as "ATC" fuses. 126/

On the packaging for fuses supplied by Fuji to K Mart, the fuses were identified as "ATO" fuses. 127/ Moreover, the packaging concept used was one that had been first introduced by Littlefuse. 128/

120/ McCarthy, supra §§ 15.17, 15.20.

121/ ET at 378, 441-442, 513.

122/ CX 28; CX 103 at 5.

123/ ICET at 441-449, 454-456, 459-460, 512; CX 38; CX 40; CX 104; CX 106; CX AN.

124/ CX 104; CX 105..

125/ CX 40; CX 104; CX 106.

126/ CX 99 at 6-10, Exhs. 4A-D; ET at 542.

127/ CX 99 at 11 and H.

128/ ET at 511-512; CX I".

In conclusion, the respondents have infringed the trademark utilized by the complainant and its licensee.

Passing Off

The same three elements required to prove trademark infringement and unlawful copying of trade dress, are also necessary to prove passing off, i.e., the trade dress and the trademarks claimed must be nonfunctional, they must have achieved secondary meaning, and there must be a likelihood of confusion between the domestically produced articles and the imported articles. 133/ In addition to those elements, passing off also requires proof of intent to deceive. 134/

We find that respondents M & T, Speedway, Fuji, David Art, and Interchem have passed off their merchandise as that of Littelfuse. 135/ As discussed above, the first three requirements have been satisfied. Moreover, there is sufficient evidence from which it reasonably can be inferred that the respondents intended to deceive consumers. The record shows that on a number of occasions, M & T sold imported blade fuses to its customers when "ATO" fuses were requested. 136/ Moreover, respondents Fuji, Speedway, David Art, and Interchem have manufactured or sold fuses having a trade dress that was identical to that of Littelfuse and identified as being either "ATC" or "ATO" fuses. 137/ 138/

133/ Stoves, supra at 3.

134/ Id.

135/ The ALJ also found that some respondents have passed off their merchandise as that of Littelfuse. See RD at 22-24.

136/ CX 97 at 16, 17.

137/ CX 97 at 16-17; CX 100 at 19; CX 99 at 4, Exh. U-A; CX 18; CX H; CX 10.

138/ We also find that non-parties Motorcar Parts Associates, K-Mart and Mid-Ohio Automotive manufactured or sold fuses having a trade dress that was identical to that of Littelfuse and identified as being either "ATC" or "ATO" fuses.

Littlefuse's trademarks were also used to market fuses sold by respondent David Art. That company sold imported blade fuses to Narda, Inc. 129/ The containers in which the individual boxes of fuses were packaged were marked "AUTO FUSE". 130/

The record shows that companies other than the respondents also have utilized the trademarks associated with the domestic industry. 131/

Exact identity between a trademark and an allegedly infringing mark is not required. The test is whether the mark will confuse people. 132/ The sole difference between Littelfuse's "Autofuse" trademark and one allegedly infringing mark ("Auto Fuse") is that Littelfuse's mark is one word while the designations of respondents M & T, Speedway, and Fuji are two words. The complainant argued that that single difference should be disregarded because it is so slight. We agree, provided that the imported fuses marketed under that designation also infringe the subject patents, simulate the complainant's trade dress, and misrepresent or fail to designate their place of origin. However, the use of those words in the marketing of fuses that are noninfringing and not otherwise deceptively marketed is not unlawful. Littelfuse's and Bussman's respective marks ("ATO" and "ATC") and the marks used by most of the respondents ("ATO" or "ATC") are identical. Thus, there is no question regarding the likelihood of confusion with respect to these marks.

129/ N. 32, supra.

130/ CX AF.

131/ For example, Mid-Ohio Automotive Inc. has its fuses labeled in Taiwan as "ATO" fuses. See CX AS.

132/ Application of West Point-Pepperell, Inc., 468 F. 2d 200 (C.C.P.A. 1972); 2 McCarthy, supra, § 23.3.

Since they copied the trade dress and used the "ATC" and "ATO" trademarks, we infer an intention to deceive consumers. 139/

The use of a picture of Littelfuse's fuse in a Speedway sales brochure constitutes misrepresentation of source and also manifests an intent to pass off its imported merchandise as that of the complainant.

False Representation

False designation of or misrepresentations concerning origin are proscribed by Section 43 of the Lanham Act 140/, which states in pertinent part as follows--

(a) Any person who shall affix, apply, annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce . . . shall be liable to a civil action

(b) Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the entered states or admitted to entry at any customhouse of the United States

False description and misrepresentation within the meaning of those terms in the Lanham Act exists where (1) the articles concerned and their packaging or containers imitate or so nearly resemble those of the plaintiff as to falsely represent them to be goods of the plaintiff, (2) the defendants deliberately have adopted and used imitative trade dress with intent to deceive the trade and the public into confusing their products with those of

139/ See Coin-Operated Audio-Visual Games and Components Thereof, Inv. No. 337-TA-87, USITC Pub. 1160 (June 1981) at 9.

140/ 15 U.S.C. § 1125.

the plaintiff, and (3) they falsely have represented that their products were products of the plaintiff. 141/

Thus, having found that the respondents, have simulated the complainant's trade dress, 142/ infringed the domestic industry's trademarks, 143/ passed off their merchandise as that of littlefuse, 144/ and also falsely designated the geographical origin of the imported fuses, 145/ we find that the

141/ See Federal-Mogul-Bower Bearings, Inc. v. Azoff, 313 F. 2d 405 (6th Cir. 1963).

142/ See discussion at 18-24 supra.

143/ See discussion at 24-28 supra. The same elements which establish common law trademark infringement also establish a prima facie case of false designation of origin, i.e. of the manufacturer. See Coin Operated Audio Visual Games, supra.

144/ See discussion at 28-29 supra.

145/ The notice of investigation listed the unfair practices of "misrepresentation of source of origin" with "misappropriation of trade dress" together. Noting that the phrase "source of origin" had been deleted from the Lanham Act (15 U.S.C.A. § 1114) in 1962, the ALJ conjectured that the Commission had intended to put in issue either the question of whether the respondents had misrepresented the place of origin of their merchandise or had misrepresented the manufacturer of the products. RD at 14. She found that there was no evidence of the misrepresentation of the country or place of origin of the imported fuses. RD at 14. Although the ALJ found that there was no misrepresentation of the country or place of origin of the imported fuses, we find that the applicable law and the information on the record of the investigation establish that certain respondents and other companies that were not parties in these proceedings have misrepresented the place of origin of the imported fuses.

Failure to designate the place of origin of imported articles is a violation of section 304 of the Tariff Act of 1930 (19 U.S.C. § 1304). It provides in pertinent part as follows:

§ 1304. Marking of imported articles and containers
Marking of articles

(a) Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. . . .

Domestic respondent M&T purchased from American Chimei, an importer, accused fuses supplied by Sun East International of Taiwan. M & T has resold those the fuses in the United States. CX 97 at 5, 10, 26-27, and 67; CX 101 at 24-25. Neither the fuses nor the packages in which they came identify the place of origin. CX 97 at 9-11; CX B; CX I.

(Footnote continued)

respondents have made false representations concerning the origin (manufacturer) of their merchandise within the meaning of the Lanham Act.

False Advertising

The notice of investigation explicitly stated that the Commission would determine whether there has been false advertising only by foreign respondents Walter and Terng Nan. 146/ The ALJ found that the complainant had shown evidence of false advertising in connection with the importation or sale of imported blade fuses in the United States, but not that such advertising had been perpetrated by respondents Walter and Terng Nan, as charged. 147/ We agree.

False advertising is an offense cognizable under § 43 of the Lanham Act. 148/

- (a) Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words

(Footnote continued)

Domestic respondent Speedway has purchased accused fuses from GIHO, a Taiwanese trading company, and has sold them in the United States. Neither the fuses nor the boxes in which they came identify the country of origin. CX 99 at 17, 27; CX A through H. Additionally, neither the fuses sold by nonparties Motorcar Parts Associates, Mid-Ohio Automotive, Inc., and Narda, Inc. (as well as Sun East International and American Chimei) nor the packages in which such fuses are sold identify the country of origin. CX 101 at 14-15; CX AC-3; CX 93 at 21-22; CX AB through CX AC; CX 111 at 7, 167; CX AS and AT; CX E through CX L.

The absence of markings on the imported fuses or their packaging identifying the country of origin, as required by 19 U.S.C. § 1304, coupled with the simulation of the complainant's trade dress and/or the marketing of imported fuses under Littelfuse and Bussman's trademarks in certain instances, as discussed above, constitute a misrepresentation of the geographical origin of the subject imported fuses.

146/ See n. 4 *supra*. The complaint limited the false advertising allegations to Walter and Terng Nan. See the complaint at 25, para. 20.

147/ RD at 25.

148/ 15 U.S.C. § 1125.

or other symbols tending falsely to describe or represent the same,
and shall cause such goods or services to enter into commerce, . . .
shall be liable to a civil action . . . (Emphasis added.)

(b) Any goods marked or labeled in contravention of the provisions
of this section shall not be imported into the United States or
admitted to entry at any customhouse of the United States

The offense is not "restricted to literal falsehoods, but extends as well
to misleading impressions created by the clever use of innuendo, indirect
intimations and ambiguous suggestions." 149/ It is unnecessary to show an
intent to deceive or actual deception or confusion, all that is required is
that the representations have a tendency to deceive. 150/

False advertising, defined at 15 U.S.C. § 55(a)(1) as an advertisement,
other than labeling, which is misleading in a material respect also
constitutes an unfair or deceptive practice that is declared unlawful under
section 12 of the Federal Trade Commission Act. 151/

§ 52. Dissemination of false advertisement--Unlawfulness

(a) It shall be unlawful for any person,
partnership, or corporation to disseminate, or cause to be
disseminated, any false advertisement--

Walter and Terng Nan's wrongful and deceptive use of the Underwriters
Laboratories' Logo, as well as Walter's wrongful use of a picture of a
Littelfuse fuse in its advertisement 152/ clearly constitute false
advertising. However, the conduct of those companies fails to constitute an
unfair trade practice in violation of section 337 since there is no evidence

149/ The Better Business Bureau of Metropolitan Houston, Inc. v. Medical
Directors Inc., 509 F.Supp. 811, 814 (S.D. Tex. 1981).

150/ Id. at 814; Stoves, supra, at 5.

151/ 15 U.S.C. § 52.

152/ CX 9; CX 29; CX 10; CX 94 at 16-18.

that either Walter or Terng Nan exported, imported, or sold infringing, deceptively marketed blade fuses in the United States. 153/

Domestic Industry

The legislative history indicates that in patent-based investigations, the relevant domestic industry should consist of the domestic facilities of the patent owner and his licensees and assignees that are devoted to the exploitation of the patent(s) in issue. 154/ The Commission consistently has defined the domestic industry in those terms in investigations involving the alleged infringement of U.S. patents.

In the instant case, the ALJ carved out separate industries for each unfair practice in issue. 155/ Although that analysis is acceptable, we find

153/ In addition, domestic respondent Speedway has admitted using a picture of a Littelfuse blade fuse in its sales brochures offering imported blade fuses for sale. ET at 543. Although that practice constitutes false advertising and Speedway (unlike Walter and Terng Nan) has imported and sold the accused fuses in the United States, the notice of investigation explicitly restricts the unfair advertising issue to respondents Walter and Terng Nan. Thus, we are constrained to find that the complainant has not proved that there has been false advertising as alleged in the complaint and specified in the notice of investigation.

154/ H. Rep No. 93-571, 93d Cong., 1st Sess. 78 (1973). See also 71 Cong. Rec. 4638, 4648.

155/ For the patent infringement claims, the ALJ defined the relevant industry as the domestic facilities of the complainant and its licensee that are devoted to the development, manufacture, sale, and/or servicing of the patented products or products made by the patented processes. RD at 26-27.

For the charges of passing off and trademark infringement, the domestic industry was defined as Littelfuse's business that is devoted to the production and sale of the blade fuses in issue. RD at 27. Bussman was not included within that industry because the complainant had presented evidence that only the non-functional design features of its own fuses and not those of Bussman were unlawfully copied by the respondents. RD at 27.

Finally, for purposes of the false advertising allegations, the ALJ defined the industry to include both Littelfuse and Bussman, since the evidence on the record showed that such advertising affected both companies.

(Footnote continued)

that the broader definition of the domestic industry based on the patent allegations in this investigation is appropriate because substantial injury has been clearly demonstrated with respect to the industry so defined. 156/ Thus, the relevant domestic industry consists of the domestic facilities of the complainant and its licensee that are devoted to (a) the development, production, sale and/or servicing of the miniature plug-in blade fuses that are covered by claims 7 and 9 of the '767 patent and claims 1, 2, and 13 of the '869 patent and (b) the use of the processes disclosed in claims 2, 3, 6, and 11 of the '175 patent and claim 17 of the '884 patent.

The ALJ found that Bussman was licensed under the '767 patent alone. RD at 26. However, the complainant took exception to that finding, arguing that the licensing agreement -----C-----

-----C-----

-----C-----

-----C----- 157/ We

agree with the complainant that the license agreement, therefore, is not limited to the '767 patent, but includes each of the patents at issue in this investigation. 158/

(Footnote continued)

The complainant initially argued that the relevant industry should be limited to the patented fuse operations that are directed to the automotive aftermarket since that is the market in which the subject imports have competed unfairly against Littelfuse and Bussman. The ALJ refused to define the industry on that basis, pointing out that: (1) Littelfuse had provided economic data on its business in aggregate form, with no breakout of data for separate markets; (2) there was no factual basis for making separate determinations as to the aftermarket business alone; and (3) the evidence demonstrates that there is substantial injury to Littelfuse's entire blade fuse business. RD at 27.

156/ See infra discussion on injury at 35-41.

157/ See CX 103, Id. at 35-36, 40-41.

158/ Id.

Efficient and Economic Operation

We find that the domestic industry is efficiently and economically operated. 159/ The complainant submitted evidence demonstrating that both Littelfuse and Bussman have made substantial capital investments in developing, engineering, marketing, and promoting the patented fuses. 160/ The production process for the patented fuses is substantially automated, utilizing modern machinery that is specifically designed for that purpose. 161/ Bussman is currently involved in developing additional production machinery that is expected to reduce the overall material cost of its "ATC" fuses. 162/

Both companies ensure the reliability, safe operation, and quality of their fuses by continuous testing and application of stringent quality control procedures. 163/ Moreover, the record also shows that Littelfuse's and Bussman's fuse operations have been consistently profitable although that profitability has declined in the recent past. 164/

Substantial Injury

There are several indications that the industry has been and currently is being substantially injured by unfair competition from the subject imports and that there will be substantial injury to the domestic industry. 165/ 166/

159/ In accord, RD at 28-29.

160/ ET at 40, 44, 45, 438-446, 448-459, 464-469, 557-558; CX 15; CX 37; CX 38; CX 102 at 5, 7, 8; CX 104-CX 106; CX AQ.

161/ ET at 42-44; CX 14; CX 102 at 5, 7, 8.

162/ CX 102 at 7-8.

163/ ET at 386-394; 398-419; CX 21; CX-66 through CX 90; CX 102 at 6, 7, 17; CX 2.

164/ CX 23; CX 28.

165/ Commissioner Haggart determines only that there is present substantial injury and, therefore, does not find it necessary to reach the issue of tendency to substantially injure.

166/ Although Interchem used samples of the infringing imports in an attempt to sell the fuses to a Littelfuse customer-----C-----

(Footnote continued)

Although the exact quantity of infringing imports and the market share taken by such merchandise is not known, the complainant has demonstrated that significant quantities of infringing fuses are being imported and sold by the respondents and by non-party companies as well. ^{167/} There are no known noninfringing fuses that may be used to replace the patented fuses produced by the complainant and its licensee. ^{168/} Consequently, any domestic sale of or share of the domestic market for miniature plug-in blade fuses that has been captured by infringing imports rightfully belongs to Littelfuse or Bussman, as the patent owner and its licensee. ^{169/}

There were many circumstances in this case that facilitated the entry of infringing imports in the U.S. marketplace and portended substantial injury to the domestic industry in the future. Such circumstances included the respondents' low labor costs, the absence of research, development and promotion costs, and an apparent lack of expenditures for quality control. Those factors have helped to enable the foreign companies to sell their fuses at a fraction of the price charged by the domestic industry. For example, the respondents and other suppliers of the imported fuses have been able to sell

(Footnote continued)

-----C-----, the mere solicitation of a sale is not a sufficient basis for finding that Interchem has violated the statute. Pump Top Insulated Containers, supra at 7. Moreover, the complainant did not represent that Littelfuse in fact cut its prices for fuses sold to the customer in question. Thus, we find that there is no evidence that the domestic industry comprised of Littelfuse and Bussman suffered tangible economic injury because of Interchem's actions. We therefore find that Interchem has not violated the statute.

In addition to finding that there has been no violation by Interchem, we find that foreign respondents Leumark, Rite, Tophole, Walter, Terng Nan, Yueh Jyh, and Zeeman also have not violated section 337 inasmuch as there is no evidence that these companies have exported, imported, and/or sold fuses of the type that are the subject of the investigation.

^{167/} See n. 6 supra.

^{168/} TAX 1.

^{169/} RD at 30.

their fuses at prices ranging from -----C-----, whereas the average price for the domestic fuses was -----C----- . 170/ -----C-----
 -----C-----
 -----C----- 171/ Citing the absence of costs discussed above, Littelfuse maintained that neither it nor Bussman could cut their prices to compete with the foreign merchandise and yet sustain their profitability. 172/

Littelfuse and Bussman have begun to experience downward trends in sales and profits in the recent past. 173/ The ALJ acknowledged that those declining trends may be explained in part by the state of the economy; but the ALJ also found that factors such as the decline in Bussman's aftermarket sales and the decline in the complainant's total sales suggest that factors other than the poor economy are affecting the industry. 174/

The domestic industry expected that sales in the automotive aftermarket would be increasing since consumers are keeping old cars running longer and therefore would need to replace plug-in fuses in cars manufactured since 1977. 175/ However, Littelfuse failed to meet the --C-- forecast----C--

-----C-----
 ---C---176/ The complainant's sales of fuses -----C----- to OEMs and in the aftermarket have shown a constant downward trend from month to month since

170/ IAFF 179; ICET at 474; CX 93 at 13, 15; CX 97 at 12, Exhs. 1 and 2; CX 103 at 23; CX 7; CX 103; CX 27 at Exh. A; ICET at 502.

171/ CX 100 at 6, 11; CX 103 at 18-19.

172/ IAFF 181, 185; CX 103 at 22-23; ICET at 474, 478; CX 23; CIAX 4.

173/ CX 23; CX 25; CX 103.

174/ RD at 34.

175/ IAFF 176; ICET at 488.

176/ ICET at 495.

September 1981. 177/ 178/ Littelfuse's total sales of fuses -----C----- from October 1981 through April 1982 constitute only -----C----- of its sales for the same months in 1980 and 1981. 179/ Littelfuse's average profit margin on sales of its fuses in both markets rose from -----C----- in 1979 to -----C--- in 1980 to -----C----- in 1981. 180/ However, it decreased to -----C--- for the first quarter of 1982. 181/

Bussman also has failed to meet -----C----- projections for 1981 and for 1982 as well. Bussman attributed that failure to its customers purchasing the lower priced imports. For example, -----C----- have refused to purchase fuses from Bussman because of the availability of imports at a cheaper price. 182/ Bussman's aftermarket sales rose from approximately -----C----- in 1979 to -----C----- in 1980 to -----C----- in 1981. 183/ If the current declining trend continues, Bussman estimates that its aftermarket sales will be only -----C----- in 1982. 184/ Bussman's profit margin on aftermarket sales decreased from -----C--- in 1979 to -----C--- in 1980 to -----C--- in 1981 to -----C--- for the first third of 1982. 185/

Another indicator of injury cited is the fact that Littelfuse's monthly production was down -----C-----

177/ IAFF 227; ICET at 52; CX 25.

178/ We note that the subject imports are competing only in the aftermarket. See discussion supra at 9.

179/ IAFF 228; CX 25.

180/ IAFF 225; CX 23.

181/ Id.

182/ IAFF 208; CX 103 at 33.

183/ IAFF 231; CX 28.

184/ IAFF 232; CX 28.

185/ IAFF 230; CX 28.

compared with the same months in the previous year. 186/ Additionally, Littelfuse's total production for that period was only -----C----- of the level of production during the same period in the previous year. 187/

There is also evidence that the domestic industry's inventories have increased. In 1981, Bussman's year-end inventory was -----C----- over the 1980 year-end inventory of -----C----- . 188/ And from January 1, 1982 to April of 1982, Bussman's inventory increased -----C----- over and above the 1981 year-end inventory. 189/ Littelfuse's inventories also increased, going from ---C--- on December 31, 1979 to ----C--- on June 30, 1980, to ----C--- on December 31, 1980, to ---C--- on June 30, 1981, to ----C--- on September 30, 1981. 190/

There also have been losses in domestic employment resulting from business lost to the imported fuses. At the end of 1981, Littelfuse terminated -----C----- and Bussman eliminated -----C----- in 1982. 191/

Both Littelfuse and Bussman were able to cite specific losses of business to the lower priced infringing imports. For example, K Mart Corp., a large Littelfuse customer since 1978, began to purchase the imported blade fuses in 1981. 192/ That year, K Mart purchased less than -----C----- it purchased from Littelfuse in 1980 (-----C----- -----) 193/ and purchased more than ---C--- imported blade fuses from

186/ IAFF 233, 234; ICET at 52; CX 20.

187/ IAFF 235; CX 20; RD at 30.

188/ IAFF 236; CX 102.

189/ IAFF 237; CX 102 at 10-11.

190/ CX 17 to the Complaint.

191/ ICET at 48, 49, CX 102 at 10.

192/ CX 27.

193/ ICET at 500-501.

Fuji for -----C----- . 194/ -----C-----
 -----C-----
 -----C----- . 195/ Finally, in the last quarter of 1981, -----C-----
 -----C-----
 -----C----- . 196/ The
 complainant estimated that it lost approximately -----C----- in sales
 of blade fuses to K Mart in the last quarter of 1981 as a result of that
 company's decision to purchase the lower priced infringing imports. 197/
 -----C-----
 -----C-----
 -----C-----
 -----C----- . 198/ However, if K Mart were to resume purchasing
 the imported fuses at lower prices than those charged by the domestic
 industry, it is likely that such sales could trigger additional losses of
 business by Littelfuse, since K Mart's competitors -----C-----
 -----C----- ,
 who also are principal customers of Littelfuse, also could be forced to
 purchase the lower-priced imported merchandise in order to remain competitive
 with K Mart. 199/

In addition to the business lost to K Mart, there have been other
 examples of sales lost to the infringing deceptively marketed imports. For

194/ ICET at 502; CX 27 at Exh. A.

195/ ICET at 500; CX 95.

196/ ICET at 497.

197/ ICET at 497; CX 95.

198/ ICET at 502.

199/ ICET at 504, 515-516.

example, Mid-Ohio Automotive Inc., a former customer of the complainant, generally purchased a substantial quantity of fuses each year. 200/ However, it purchased a substantial quantity of imported fuses from an importer at ---
 -----C----- . Similarly, domestic respondent M & T, also once a purchaser of the complainant's merchandise, purchased --C-- imported infringing fuses from an importer. 201/

In conclusion, we find that the effect or tendency of the unfair methods of competition and unfair acts occurring in the importation and sale of the articles concerned is to substantially injure an industry, efficiently and economically operated in the United States. 202/

Relief

We determine that the most appropriate remedy for the violation existing in this case is a general exclusion order covering miniature plug-in blade fuses that (a) infringe the asserted claims of the '767, '175, '884, or '869 patents, or (b) infringe the "ATO" or "Autofuse" trademarks of the complainant or the "ATC" trademark of Bussman, or (c) falsely represent or fail to designate their geographical origin, or (d) falsely represent their manufacturer. 203/

A widespread pattern of unlawful importation and sale exist in this case. Each of the domestic respondents and foreign respondents David Art and Fuji have engaged in patent infringement, false designation of origin, false

200/ ICET at 508-509; CX 107.

201/ CX 97 at Exhs. 1 and 2.

202/ In accord, RD at 30-35.

203/ See A0. Since there is no evidence of stockpiling of the infringing fuses and, in light of the complainant's withdrawal of its request for cease and desist order (see n. 7), we find issuance of cease and desist orders unnecessary.

representation of the manufacturer, simulation of the complainant's trade dress, trademark infringement, and/or passing off in the importation and sale of the subject fuses. 204/ Although there is no evidence that seven of the nine foreign respondents actually have exported and/or sold infringing fuses in the United States, five of those respondents have advertised the availability of blade fuses in "Trade Winds" magazine, a publication circulated in the United States. 205/ Walter has admitted using a picture of a Littelfuse fuse in its advertisement in "Trade Winds." 206/ Additionally, brochures or catalogues offering blade fuses for sale have been circulated in the United States by foreign respondents Yueh Jyh and Zeeman. 207/ 208/

Companies other than the respondents also have exported to, imported into, and/or sold in the United States imported fuses of the accused type. Moreover, there is evidence that unlawful conduct by importers is continuing and increasing. For example, the complainant submitted solicitations for the sale of imported plug-in blade fuses that have been sent to the United States since the close of the evidentiary hearing before Judge Saxon. The documents submitted were (1) sales material from foreign respondent Zeeman, which was sent to domestic respondent Speedway, and (2) a brochure from Auto Inca International Co. in Taiwan, which was sent to the complainant's licensee Bussman. 209/

204/ See discussion supra at 10-29.

205/ See CX AY, CX 8 through CX 12; ICET 527-530.

206/ CX 29.

207/ CX 99 at 16-17, Exh. 10; ET 533-534; CX 13; CX 39; ET 571-572; CX 12.

208/ Although those companies are not parties, the Commission's in rem jurisdiction authorizes the issuance of an exclusion order barring entry of the fuses concerned regardless of their source. Sealed Air Corp., supra.

209/ Exhibits A and B to Littelfuse's Brief on Remedy, Bond, and the Public Interest.

Business conditions in this case support the issuance of a general exclusion order. 210/ There clearly is an established demand for the patented product. Since Littelfuse introduced its "Autofuse" blade fuse in 1976, it has replaced the glass cartridge fuses and is now standard equipment in every automobile produced by the major domestic automakers. 211/ As a result of the complainant's efforts promoting the new fuses and the proven performance of the fuses of both companies, a market for the blade fuses has been created in this country.

Since Speedway and M & T as well as other companies which are importing and/or selling the accused fuses sell a complete line of products, they have established marketing and distribution networks available for marketing the subject fuses. If the exclusion order were restricted to the companies named as respondents, it is likely that other non-party importers and distributors would continue to import the infringing blade fuses.

Additionally, it reasonably can be inferred that there is a significant cost differential for production here and abroad from the fact that the foreign respondents were able to offer fuses at prices which were substantially lower than those charged by the domestic industry. The complainant maintained that owing to high costs, neither Littelfuse nor Bussman is able to cut its prices drastically in order to compete with the imports and still operate profitably. 212/

Although the advertisements placed in "Trade Winds" magazine and in sales brochures were not a sufficient basis for a finding that the advertising

210/ See Airless Paint Spray Pumps and Components Thereof, Investigation No. 337-TA-90, USITC Pub. 1199 (November 1981) at 18-19.

211/ ET at 37.

212/ See CX 93 at 12-13, 15, 42-44; CX 11 at 6, 12, 13, 30, and 31; CX 27 at Attachments A and B; CX 7; CX 28 at Attachment X; CX 102; CX 103; CX 7; CX 23; IAFF 179, 181-184.

foreign companies have violated the statute, it is one indication that a number of foreign manufacturers have the facilities and resources to manufacture the subject fuses. Additionally, the nature of the product renders blade fuses easy to duplicate, provided that reliability is not a consideration because quality control operations are lengthy and costly.

It appears that the cost to foreign entrepreneurs of building a facility capable of producing the patented article is relatively low because of lower labor costs abroad, the absence of research and development costs and promotional costs which the Littelfuse and subsequently Bussman incurred in introducing the blade fuse to the U.S. market. In addition, there is also an apparent lack of expenditures for quality control, judging by the evidence that the imported fuses do not meet the same reliability standards as the domestically-produced fuses. 213/

An additional ground for issuing a general exclusion order is that it has been virtually impossible for Littelfuse to obtain specific information regarding the ultimate sources of supply of the infringing imports owing to the number of producers involved, the importers' recalcitrance in disclosing such information 214/ and the fact that none of the imports are marked to identify the manufacturer. Thus, the sum of the factors discussed above demonstrate that business conditions are such that a general exclusion order is warranted in this case to remedy the unfair acts found to exist.

The Public Interest

The legislative history of section 337 provides that the public interest is of paramount importance and that the public health and welfare and assurance

213/ CFF 103-144.

214/ See CX 99.

of competitive conditions in the United States economy must be the overriding considerations in the administration of the statute. 215/ In determining whether a general exclusion order should be issued, the Commission must consider the effect of that remedy on (1) the public health and welfare, (2) competitive conditions in the United States economy, (3) the production of like or directly competitive articles in the United States, and (4) United States consumers. 216/

In accordance with the statutory requirement, 217/ the Commission solicited written comments from other federal agencies, as well as interested members of the public, concerning the issues of whether a remedy should be granted in this case and what impact such relief would have on the enumerated aspects of the public interest. 218/ No comments were received.

The complainant argues that because the imported fuses do not meet the same reliability and safety standards as the domestically-produced fuses and thus pose a safety hazard to consumers, 219/ such fuses should be excluded in order to protect the public health and welfare. The legislative history regarding these statutory provisions shows that Congress intended that (1) the Commission determine whether relief should not be issued in a given investigation--notwithstanding the existing violation--and (2) the likelihood of an adverse impact on the public is to be the dominant consideration. We note that whether the public welfare will be advanced or benefitted is not a relevant consideration in determining whether relief should be given in a particular case. 220/

215/ S. Rep. No. 1298, 93rd Cong., 2d Sess. 193, 197 (1974).

216/ 19 U.S.C. § 1337d.

217/ 19 U.S.C. § 1337 (b)(1).

218/ 47 Fed. Reg. 39746 (1982).

219/ ICET at 171; CX 52-CX 56; CX 108; see n. 213 supra.

220/ S. Rep. No. 1298, supra, at 197.

We find that the issuance of a general exclusion order would not adversely affect competitive conditions in the U.S. economy. As the owner and the licensee of the patents in issue, Littelfuse and Bussman are entitled to a legal monopoly in the U.S. market for such fuses. Although there are no other noninfringing blade fuses produced in the United States, there is no indication that exclusion of infringing, deceptively marketed imported blade fuses would discourage or impede fair competition in the U.S. marketplace.

There is no information on the record indicating that exclusion of the imported articles would adversely affect the production of like or directly competitive articles in the United States. There also is no indication that U.S. consumers would be adversely affected. The domestic industry-----C-----
-----C----- is capable of supplying the present domestic demand for blade fuses as well as any increases. 221/

The Bond

We determine that a bond of 90 percent of the entered value of the fuses concerned is appropriate because it offsets the competitive advantages enjoyed by the respondents as a result of their unfair acts. 222/ In this case, the respondents were able to sell their infringing blade fuses at prices significantly lower than those of Littelfuse and Bussman by deceptively marketing and passing off the imported merchandise as that of Littlefuse or

221/ CX 19; CX 103 at 21.

222/ The Commission is required under section 337(g)(3), 19 U.S.C. § 1337(g)(3), to set a bond for the articles concerned during the period in which the President reviews the Commission's determination. As to what we are directed to consider in determining the amount of the bond, see S. Rep. No. 1298, supra, at 198; 19 C.F.R. § 210.14(a)(3).

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

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In the Matter of
CERTAIN MINIATURE PLUG-IN BLADE FUSES

OFFICE OF THE SECRETARY
DOCKET/USITC

Investigation No. 337-TA-114

NOTICE OF ISSUANCE OF EXCLUSION ORDER

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of exclusion order.

SUPPLEMENTARY INFORMATION: On November 22, 1982, the Commission unanimously determined with respect to the above-captioned investigation 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 into the United States, and in their sale, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States. The Commission subsequently determined on December 1, 1982, that a general exclusion order pursuant to subsection (d) of section 337 is the most appropriate remedy for the violation found to exist, that the public-interest factors enumerated in subsection (d) do not preclude the issuance of such an order, and that the amount of the bond under subsection (g) of section 337 should be 90 percent of the entered value of the articles concerned. The Commission's Action and Order and the Commission Opinion in support thereof were issued on January 13, 1983.

The notice instituting the investigation and defining its scope was published in the Federal Register on January 13, 1982 (47 F.R. 1448).

The Commission Action and Order, the Commission Opinion, and all other nonconfidential documents on the record of the investigation are available for public inspection Monday through Friday during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

By order of the Commission.



Kenneth R. Mason
Secretary

Issued: January 13, 1983

Bussman in a market created and developed by the complainant and its licensee. We concluded that 90 percent is an appropriate bond after having compared -----C----- 223/-----
-----C----- 224/ taking into account such costs as shipping, insurance, customs, brokerage duties and overhead. We also utilized the average of the prices paid by the importers and measured that average against the domestic industry's cost in order to make allowances for shipping, insurance, and other costs. 225/

223/ See CX 7.

224/ See CX 7; CX 23; IAFF 179, 181-184.

225/ See HT at 51-52.