

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN POCKET LIGHTERS

Investigation No. 337-TA-1142

NOTICE OF COMMISSION FINAL DETERMINATION OF A VIOLATION OF SECTION 337; ISSUANCE OF A GENERAL EXCLUSION ORDER AND A CEASE AND DESIST ORDER; TERMINATION OF THE INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm an initial determination (“ID”) of the presiding administrative law judge (“ALJ”) granting the motion of BIC Corporation (“BIC” or “Complainant”) for summary determination of a violation of section 337 by respondents Milan Import Export Company, LLC (“Milan”); Wellpine Company Limited (“Wellpine”); and Zhuoye Lighter Manufacturing Co., Ltd. (“Zhuoye”) (collectively, “the Defaulting Respondents”). The Commission has also determined to issue a general exclusion order (“GEO”) barring entry of certain pocket lighters including an oblong body which is elliptical in cross-section, a fork which is generally parabolic in cross-section, and/or a hood which is generally parabolic in cross-section, that infringe Complainant’s asserted trade dress. The Commission has further determined to issue a cease and desist order (“CDO”) directed to respondent Milan. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On February 12, 2019, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Complainant BIC of Shelton, Connecticut. *See* 84 *Fed. Reg.* 3486-87 (Feb. 12, 2019). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pocket lighters by reason of infringement of U.S. Trademark Registration Nos. 1,761,622 and 2,278,917. *See id.* The notice of investigation names numerous respondents, including Milan of San Diego, California; Wellpine of Hong

Kong; and Zhuoye of Foshan City, China (collectively, “Defaulting Respondents”). *See id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *See id.*

The Commission previously terminated other respondents based on settlement and entry of a consent order. *See* Order No. 21 (Oct. 30, 2019), *unreviewed*, Comm’n Notice (Nov. 25, 2019). The Commission also terminated an unserved respondent based on the withdrawal of the complaint allegations as to that respondent. *See* Order No. 23 (Dec. 18, 2019), *unreviewed*, Comm’n Notice (Jan. 16, 2020).

The Commission further found each of the Defaulting Respondents in default. *See* Order No. 13 (June 6, 2019), *unreviewed*, Comm’n Notice (July 8, 2019); Order No. 14 (June 6, 2019), *unreviewed*, Comm’n Notice (July 8, 2019); Order No. 15 (June 18, 2019), *aff’d with modification*, Comm’n Notice (July 10, 2019).

On November 14, 2019, Complainant filed a motion for summary determination of a violation of section 337 by the Defaulting Respondents. On December 16, 2019, OUII filed a response in support of Complainant’s motion. On February 12, 2020, the ALJ issued an ID granting Complainant’s motion for summary determination of violation of section 337 by the Defaulting Respondents. No petition for review of the ID was filed.

On April 22, 2020, the Commission determined to review the ID in part with respect to the ID’s findings on the economic prong of the domestic industry requirement. *See* 85 Fed. Reg. 23528-29 (Apr. 28, 2020). The Commission’s notice also requested written submissions on remedy, the public interest, and bonding. *See id.* On May 8, 2020, Complainant and OUII submitted written submissions, and on May 15, 2020, Complainant submitted a reply submission, in response to the Commission’s notice. No other submissions were received.

As explained in the Commission’s Opinion issued concurrently herewith, the Commission has determined to affirm the ID’s findings with respect to the economic prong of the domestic industry requirement and, thus, the ID’s finding of a violation of section 337. The Commission has also determined that the appropriate remedy in this investigation is: (1) a GEO prohibiting the unlicensed entry of certain pocket lighters including an oblong body which is elliptical in cross-section, a fork which is generally parabolic in cross-section, and/or a hood which is generally parabolic in cross-section, that infringe Complainant’s asserted trade dress, pursuant to section 337(d)(2) (19 U.S.C. 1337(d)(2)); and (2) a CDO directed to defaulting respondent Milan, pursuant to section 337(f)(1) (19 U.S.C. 1337(f)(1)). The Commission has further determined that the bond during the period of Presidential review pursuant to section 337(j) (19 U.S.C. 1337(j)) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the GEO and/or CDO. Still further, the Commission has determined that the public interest factors enumerated in subsections 337(d)(1) and (f)(1) (19 U.S.C. 1337(d)(1), (f)(1)) do not preclude the issuance of the GEO and CDO.

The Commission vote for this determination took place on June 22, 2020.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: June 22, 2020