

In the Matter of

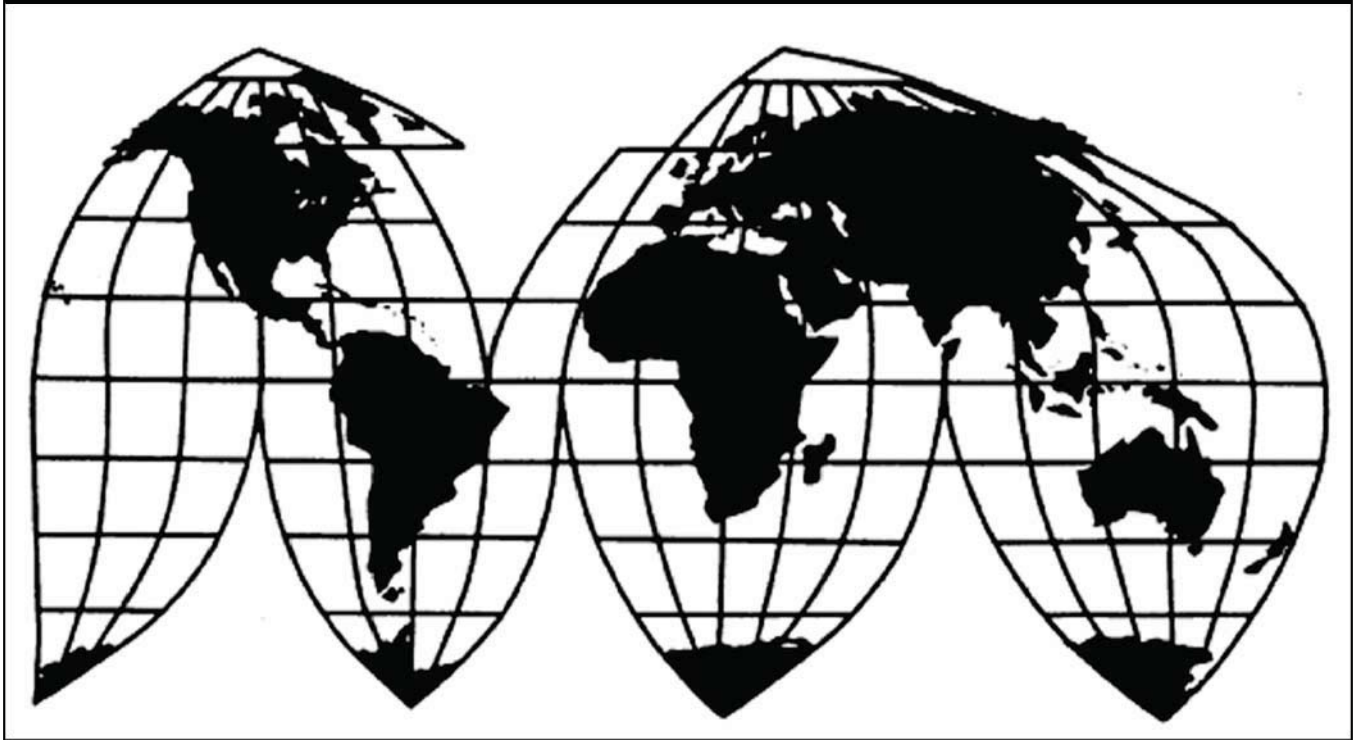
**Certain Digital Multimeters, and
Products with Multimeter Functionality**

Investigation No. 337-TA-588

Publication 4210

December 2010

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Washington, DC 20436**

U.S. International Trade Commission

Washington, DC 20436
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In the Matter of

**Certain Digital Multimeters, and
Products with Multimeter Functionality**

Investigation No. 337-TA-588



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL MULTIMETERS,
AND PRODUCTS WITH MULTIMETER
FUNCTIONALITY**

Investigation No. 337-TA-588

**ISSUANCE OF GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDERS;
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 issued a general exclusion order and cease and desist orders directed to two defaulting domestic respondents in the above-identified investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3041. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.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: The Commission instituted this investigation on November 13, 2006, based on a complaint filed on October 6, 2006, and supplemented on October 27 and 30, 2006, by Fluke Corp. of Everett, Washington, alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital multimeters and products with multimeter functionality by reason of infringement of United States Trademark Registration No. 2,796,480 ("the '480 mark") and also by reason of infringement of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States. 71 *Fed. Reg.* 661940 (November 13, 2006). Complainant requested that the Commission issue a general exclusion order and cease and desist orders. The complaint named eighteen respondents in China, Hong Kong, and the United States. Fourteen respondents were terminated from the investigation by settlement agreement, consent order, or both. The four remaining respondents were found in default.

On July 3, 2007, complainant filed a motion seeking summary determination of violation of section 337. On January 14, 2008, the presiding administrative law judge (“ALJ”) issued an initial determination (“ID”) granting complainant’s motion for summary determination of violation of section 337 as to the four defaulting respondents. He recommended issuance of a general exclusion order, issuance of cease and desist orders against respondents Electronix Express and HandsOnTools, and that the amount of bond for temporary importation during the Presidential review period be set at 100 percent of the entered value of the articles concerned. No petitions for review were filed.

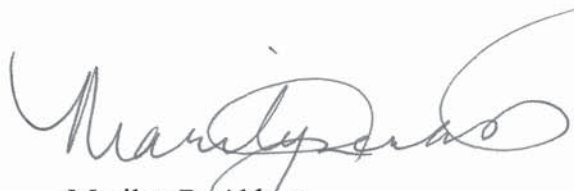
On February 12, 2008, the Commission determined not to review the ID and requested written submissions on the issues of remedy, the public interest, and bonding. On February 28 and March 6, 2008, respectively, the complainant Fluke and the Investigative Attorney (“IA”) filed briefs and the IA filed a reply brief on these issues.

Having reviewed the record in this investigation, including the ALJ’s recommended determination and the parties’ written submissions, the Commission has determined that the appropriate form of relief is a general exclusion order prohibiting the unlicensed entry of digital multimeters that infringe the ‘480 mark or Fluke’s protected trade dress and cease and desist orders directed to Electronix Express and HandsOnTools.

The Commission has further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. § 1337(d)(1)) do not preclude issuance of the general exclusion order. Finally, the Commission determined that the amount of bond to permit temporary importation during the Presidential review period (19 U.S.C. § 1337(j)) shall be in the amount of 100 percent of the value of the digital multimeters that are subject to the order. The Commission’s order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

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 sections 210.42-46 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42-46.

By order of the Commission.



Marilyn R. Abbott
Secretary to the Commission

Issued: May 14, 2008

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL MULTIMETERS,
AND PRODUCTS WITH MULTIMETER
FUNCTIONALITY**

Inv. No. 337-TA-588

GENERAL EXCLUSION ORDER

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) based on the unlawful importation and sale of certain digital multimeters and products with multimeter functionality that infringe (1) United States Trademark Registration No. 2,796,480 and (2) the trade dress of certain of Fluke's digital multimeters and products with multimeter functionality ("protected trade dress). The protected trade dress is as follows:

digital multimeters and products with multimeter functionality that have a contrasting color combination of a dark-colored body or face and a contrasting yellow border, frame, molding, overlay, holster or perimeter.

See Unreviewed Initial Determination at 6.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the criteria for issuance of a general exclusion order have been met in this investigation. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing digital multimeters and products with multimeter functionality.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the general exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.

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

1. Digital multimeters and products with multimeter functionality that (i) infringe U.S. Registered Trademark No. 2,796,480 or any marks confusingly similar thereto or that are otherwise misleading as to source, origin, or sponsorship, or (ii) bear Fluke's protected trade dress or any trade dress confusingly similar thereto or that are otherwise misleading as to source, origin or sponsorship are excluded from entry into the United States for consumption, entry for consumption, except under license of the trademark and protected trade dress owner or as provided by law.

2. For the purpose of assisting U.S. Customs and Border Protection in the enforcement of this Order, and without in any way limiting the scope of the Order, the Commission has attached to this Order as Exhibit 1 a copy of a series of full-color photographs of exemplary Fluke digital multimeters and products with multimeter functionality having the aforesaid trademark and trade dress. The Commission has also attached the relevant trademark registration to this Order as Exhibit 2 and full-color photographs of devices that have been found to infringe the trademark and protected trade dress as Exhibit 3.

3. Notwithstanding paragraph 1 of this Order, the aforesaid digital multimeters and products with multimeter functionality are entitled to entry into the United States for consumption, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100 percent of entered value pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(j)), and the Presidential memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251) from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than 60 days after the date of receipt of this Order. However, this provision does not exempt infringing articles from seizures under the trademark laws enforced by U.S. Customs and Border Protection, most notably 19 U.S.C. § 1526(e) and 19 U.S.C. § 1595a(c)(2)(C) in connection with 15 U.S.C. § 1124.

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

5. Complainant Fluke Corporation shall file a written statement with the Commission, made under oath, each year on the anniversary of the issuance of this Order stating whether Fluke Corporation continues to use each of the

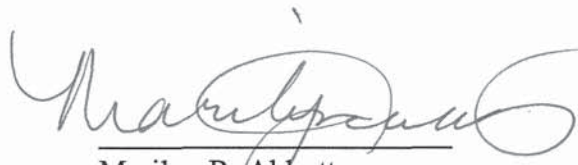
aforesaid trademark and protected trade dress in commerce in the United States in connection with digital multimeters and products with multimeter functionality, and whether any of the aforesaid trademark or protected trade dress has been abandoned, canceled, or rendered invalid or unenforceable.

6. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

7. The Secretary to the Commission shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and U.S. Customs and Border Protection.

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

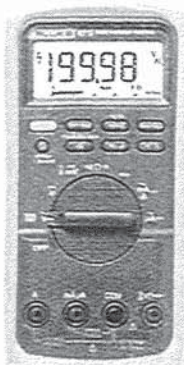
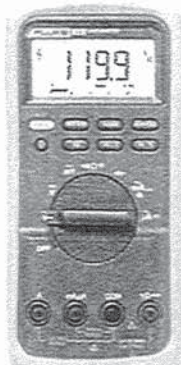
By Order of the Commission.

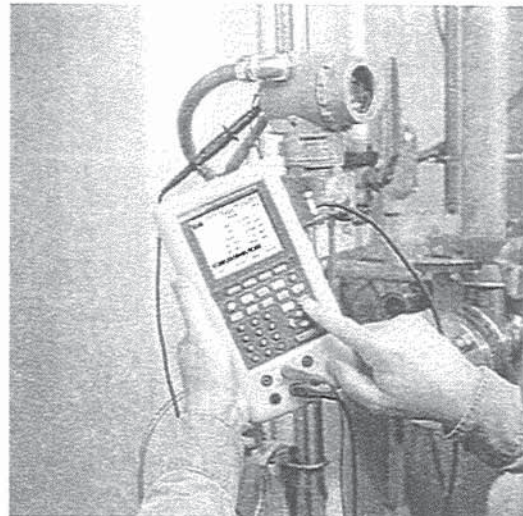


Marilyn R. Abbott
Secretary to the Commission

Issued: May 14, 2008

Exhibit 1





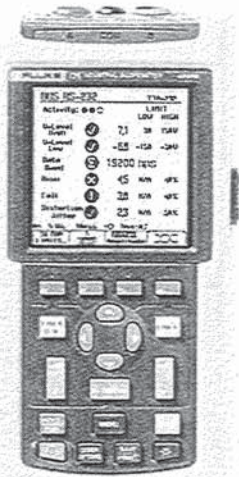
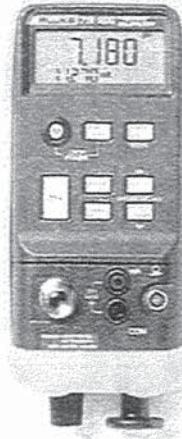
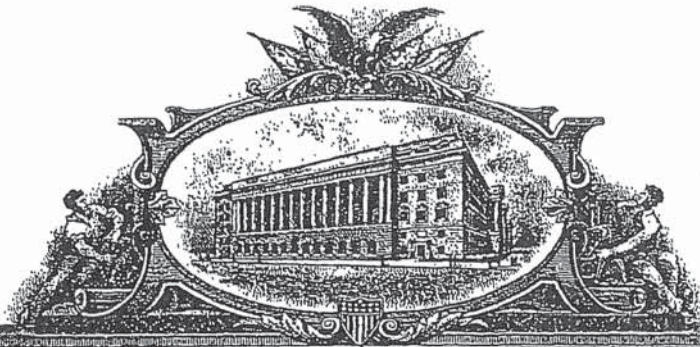


Exhibit 2

790410



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:


UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

December 05, 2005

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,796,480 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *December 23, 2003*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office


N. WILLIAMS
Certifying Officer



Int. Cl.: 9

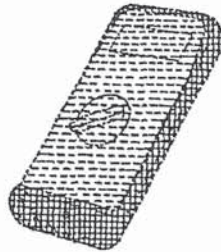
Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,796,480

Registered Dec. 23, 2003

TRADEMARK
PRINCIPAL REGISTER



FLUKE CORPORATION (WASHINGTON COR-
PORATION)
6920 SEAWAY BOULEVARD
EVERETT, WA 98203

FOR: ELECTRONIC TEST AND MEASURING
INSTRUMENTS AND DEVICES, AND PORTABLE
ELECTRONIC TEST TOOLS, NAMELY, DIGITAL
MULTIMETERS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36
AND 38).

FIRST USE 0-0-1988; IN COMMERCE 0-0-1988.

THE DRAWING IS LINED FOR THE COLORS
DARK GRAY AND YELLOW.

THE MARK CONSISTS OF THE COLORS DARK
GRAY AND YELLOW AS APPLIED TO THE
GOODS. THE DOTTED OUTLINE OF THE GOODS
IS INTENDED TO SHOW THE POSITION OF THE
MARK AND IS NOT A PART OF THE MARK.

SEC. 2(F).

SER. NO. 75-934,005, FILED 3-3-2000.

GLENN CLARK, EXAMINING ATTORNEY

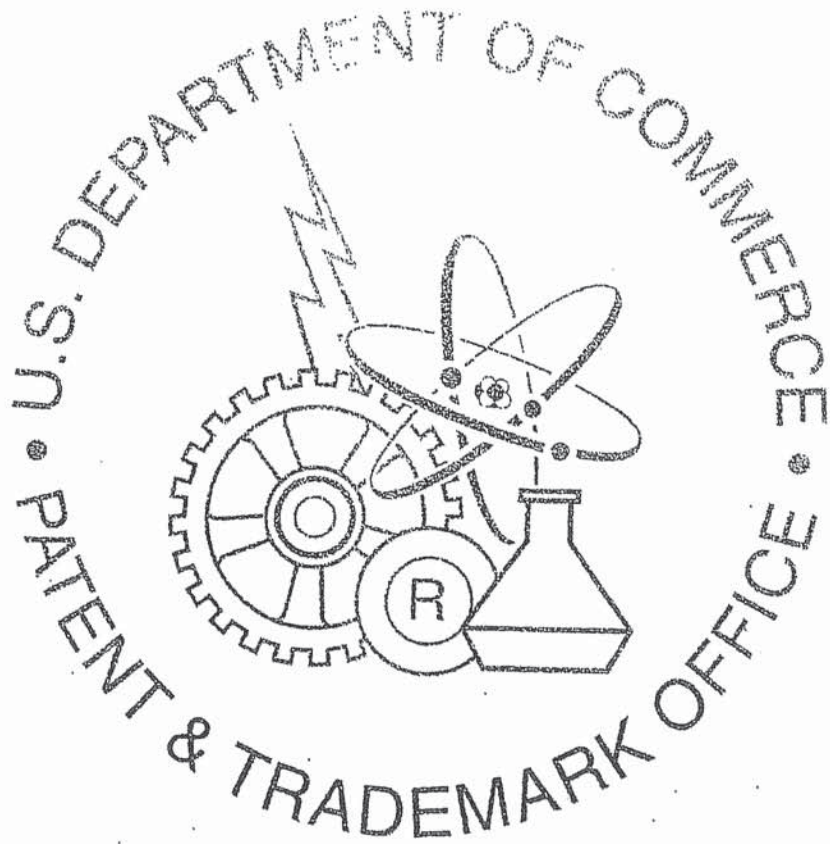
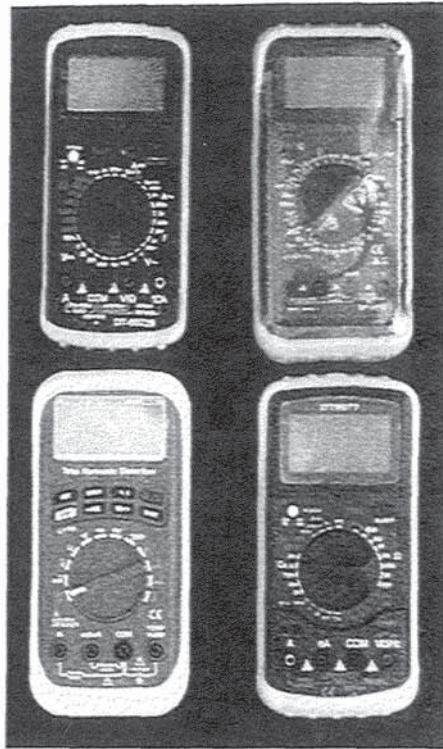
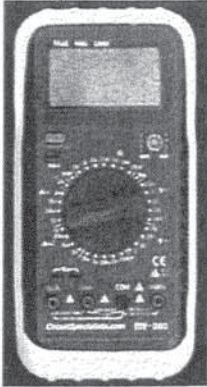


Exhibit 3



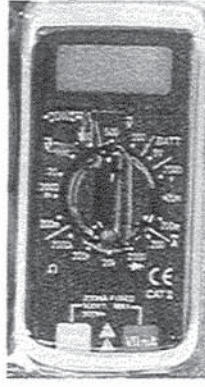
Circuit Specialists



Digitek



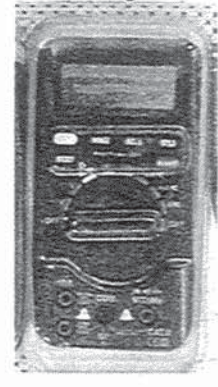
Electronic Specialties



Elenco



Harbor Freight



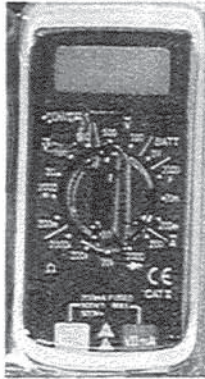
Parts Express



Mastech



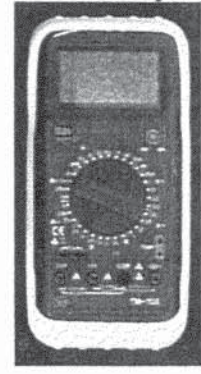
Everbest



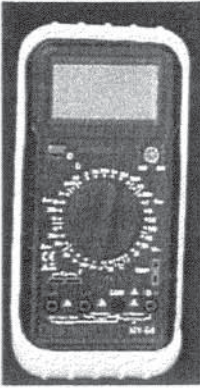
Victor Hi-Tech



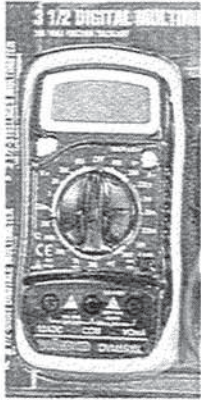
TechBuys



Jameco



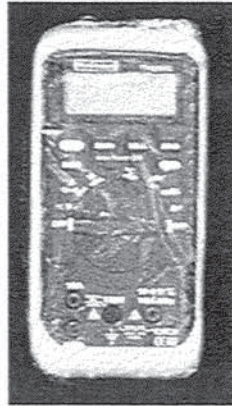
Velleman



Altadox



Kaito



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL MULTIMETERS,
AND PRODUCTS WITH MULTIMETER
FUNCTIONALITY**

Inv. No. 337-TA-588

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Electronix Express cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, digital multimeters and products with multimeter functionality that are covered by United States Trademark Registration No. 2,796,480 (“the ‘480 mark”) and/or digital multimeter or products with multimeter functionality having a dark-colored body or face surrounded by a yellow border, frame, molding, overlay, perimeter, holder and/or holster, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I. Definitions

As used in this Order:

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

(B) “Complainant” shall mean Fluke Corporation (“Fluke”) of Everett, Washington.

(C) “Respondent” means Electronix Express, a division of R.S.R. Electronics, Inc., 365 Blair Road, Avenel, New Jersey 07001.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

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

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “protected trade dress” shall mean digital multimeter or products with multimeter functionality having a dark-colored body or face surrounded by a yellow border, frame, molding, overlay, perimeter, holder and/or holster a dark-colored body or face surrounded by a yellow border, holder and/or holster. *See* Exhibit A (photographs of exemplary Fluke digital multimeters).

(H) The term “covered products” shall mean digital multimeters and products with multimeter functionality that are covered by United States Trademark Registration No. 2,796,480 (“the ‘480 mark”) or Fluke’s protected trade dress.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents,

licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

III. Conduct Prohibited

The following conduct in the United States of Respondent is prohibited by the Order. While the trademark and protected trade dress remain valid and enforceable, Respondent shall not:

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

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of United States Trademark Registration No. 2,796,480 (“the ‘480 mark”) or the Fluke’s trade dress licenses or authorizes such specific

conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this reporting requirement, the reporting periods shall commence on January 1st of each year and shall end on the subsequent December 31st . However, the first report required under this section shall cover the period from the date of issuance of this Order through December 31st. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of covered products that Respondent has imported or sold in the United States after importation during the reporting period and the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI. Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so choose, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation,

marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the trademark and trade dress have been abandoned, canceled, or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75,

including an assessment of civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X. Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative under authority delegated by the President, *70 Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 100% of entered value per unit of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

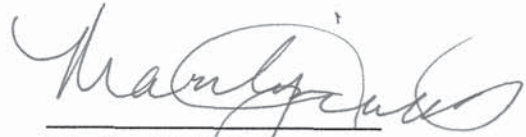
The bond is to be posted in accordance with the procedures established by

the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefor made by Respondent to the Commission.

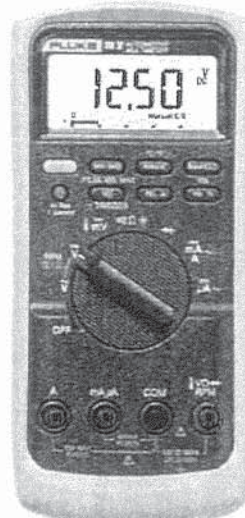
By Order of the Commission.

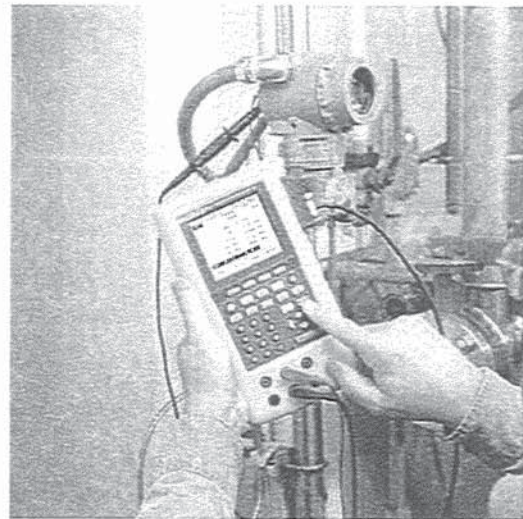
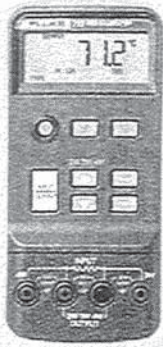
A handwritten signature in cursive script, appearing to read "Marilyn R. Abbott". The signature is written in black ink and is positioned above a horizontal line.

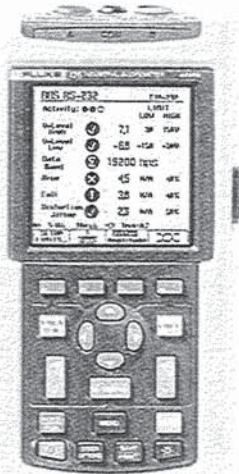
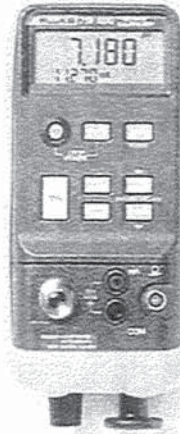
Marilyn R. Abbott
Secretary to the Commission

Issued: May 14, 2008

Exhibit A







UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL MULTIMETERS,
AND PRODUCTS WITH MULTIMETER
FUNCTIONALITY**

Inv. No. 337-TA-588

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT HandsOnTools cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, digital multimeters and products with multimeter functionality that are covered by United States Trademark Registration No. 2,796,480 (“the ‘480 mark”) and/or digital multimeter or products with multimeter functionality having a dark-colored body or face surrounded by a yellow border, frame, molding, overlay, perimeter, holder and/or holster, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I. Definitions

As used in this Order:

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

(B) “Complainant” shall mean Fluke Corporation (“Fluke”) of Everett, Washington.

(C) “Respondent” means HandsOnTools, 1001 -A E Harmony Rd Suite: 332, Fort Collins, Colorado 80525.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

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

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “protected trade dress” shall mean digital multimeter or products with multimeter functionality having a dark-colored body or face surrounded by a yellow border, frame, molding, overlay, perimeter, holder and/or holster a dark-colored body or face surrounded by a yellow border, holder and/or holster. *See* Exhibit A (photographs of exemplary Fluke digital multimeters).

(H) The term “covered products” shall mean digital multimeters and products with multimeter functionality that are covered by United States Trademark Registration No. 2,796,480 (“the ‘480 mark”) or Fluke’s protected trade dress.

II. Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents,

licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

III. Conduct Prohibited

The following conduct in the United States of Respondent is prohibited by the Order. While the trademark and protected trade dress remain valid and enforceable, Respondent shall not:

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

IV. Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of United States Trademark Registration No. 2,796,480 (“the ‘480 mark”) or the Fluke’s trade dress licenses or authorizes such specific

conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V. Reporting

For purposes of this reporting requirement, the reporting periods shall commence on January 1st of each year and shall end on the subsequent December 31st. However, the first report required under this section shall cover the period from the date of issuance of this Order through December 31st. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of covered products that Respondent has imported or sold in the United States after importation during the reporting period and the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI. Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so choose, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII. Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation,

marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the trademark and trade dress have been abandoned, canceled, or rendered invalid or unenforceable.

VIII. Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX. Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75,

including an assessment of civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X. Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI. Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative under authority delegated by the President, *70 Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 100% of entered value per unit of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

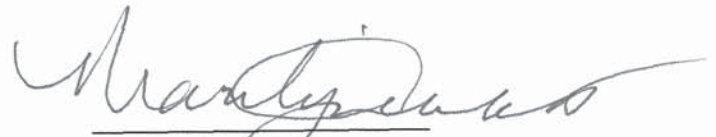
The bond is to be posted in accordance with the procedures established by

the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefor made by Respondent to the Commission.

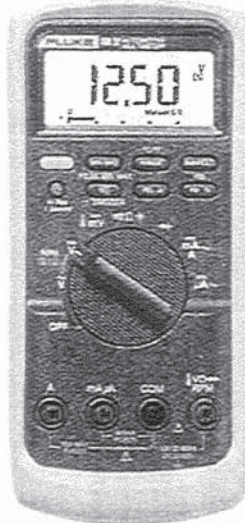
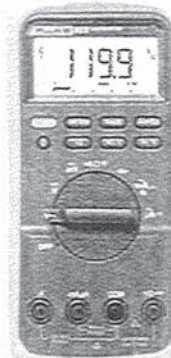
By Order of the Commission.

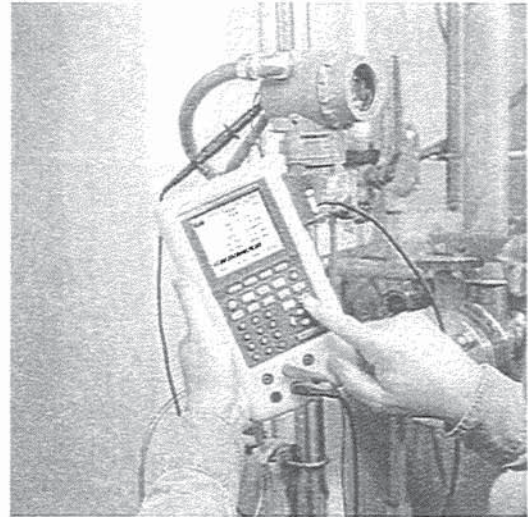
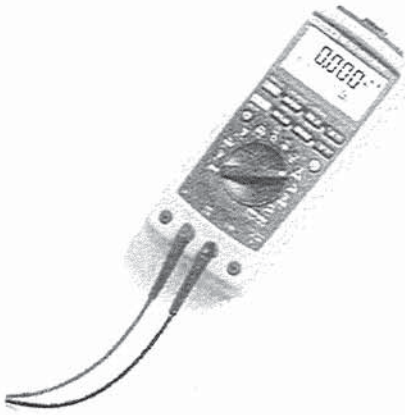
A handwritten signature in cursive script, appearing to read "Marilyn R. Abbott", written in black ink.

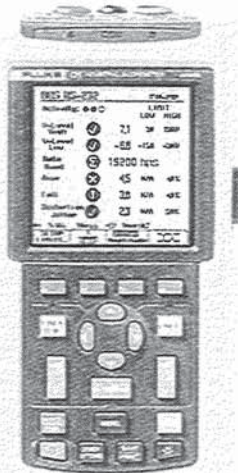
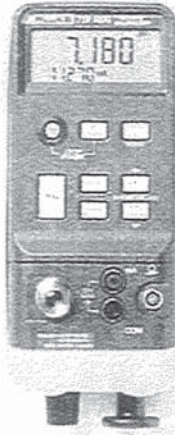
Marilyn R. Abbott
Secretary to the Commission

Issued: May 14, 2008

Exhibit A







**CERTAIN DIGITAL MULTIMETERS, AND PRODUCTS
WITH MULTIMETER FUNCTIONALITY**

337-TA-588

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ISSUANCE OF GENERAL EXCUSION ORDER AND CEASE AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION** has been served by hand upon the Commission Investigative Attorney, Anne Goalwin, Esq., and the following parties as indicated, on
May 15, 2008



Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

**ON BEHALF OF COMPLAINANT FLUKE
CORPORATION:**

Peter E. Moll, Esq.
Cecilia H. Gonzalez, Esq.
John J. Rosenthal, Esq.
HOWREY LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004
P-202-783-0800

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

RESPONDENTS:

HandsOnTools
1001-A E Harmony Rd., Suite 332
Fort Collins, Colorado 80525

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

Electronix Express
a division of R.S.R. Electronics, Inc.
365 Blair Road
Avenel, NJ 07001

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

GOVERNMENT AGENCIES:

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Antitrust Division
U.S. Department of Justice
601 Street, NW, Room 10023
Washington, DC 20530

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- Via First Class Mail
- Other: _____

PUBLIC VERSION

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

In the Matter of

**CERTAIN DIGITAL MULTIMETERS,
AND PRODUCTS WITH MULTIMETER
FUNCTIONALITY**

Inv. No. 337-TA-588

COMMISSION OPINION

BACKGROUND

The Commission instituted this investigation on November 13, 2006, based on a complaint filed on October 6, 2006, and supplemented on October 27 and 30, 2006, by Fluke Corp. (“Fluke”) of Everett, Washington, alleging violations of section 337 of the Tariff Act of 1930 (“section 337”) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital multimeters and products with multimeter functionality by reason of infringement of United States Trademark Registration No. 2,796,480 (“the ‘480 mark”) and also by reason of infringement of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States. 71 Fed. Reg. 661940 (Nov. 13, 2006). Complainant requested that the Commission issue a general exclusion order and cease and desist orders. The complaint named eighteen respondents in China, Hong Kong, and the United States. Fourteen respondents were terminated from the investigation by settlement agreement, consent order, or both. The four remaining respondents have been found in default.

On July 3, 2007, complainant filed a motion seeking summary determination of violation of section 337. Complainant also requested that the administrative law judge (“ALJ”)

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recommend a general exclusion order, cease and desist orders against respondents HandsOnTools and Electronix Express, and a 100 percent bond during the Presidential review period. On July 13, 2007, the Commission investigative attorney (“IA”) filed a response in support of the motion, supplemented on July 18. No other responses were received.

On January 14, 2008, the ALJ issued an Initial Determination (“ID”) (Order No. 22) granting complainant’s motion for summary determination of a violation of section 337 with respect to the defaulting respondents. The ALJ also made a Recommended Determination (“RD”) that the Commission issue a general exclusion order and cease and desist orders against Electronix Express and HandsOnTools and that the amount of bond for temporary importation during the Presidential review period be set at 100 percent of the entered value of the articles concerned.

On February 12, 2008, the Commission determined not to review the ID and requested written submissions on the issues of remedy, the public interest, and bonding. On February 28 and March 6, 2008, respectively, complainant Fluke and the IA filed briefs and the IA filed a reply brief on these issues as well as proposed remedial orders. This investigation is now before the Commission for final disposition and determinations on remedy, the public interest, and bonding.

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DISCUSSION

I. REMEDY

A. Statutory Background and Criteria for Issuance of Remedial Orders

Upon finding a violation of section 337, the Commission may issue a remedial order excluding the goods of the person(s) found in violation (a limited exclusion order) or, if certain criteria are met, against all infringing goods regardless of the source (a general exclusion order). It also may issue cease and desist orders to respondents, ordering the respondents to cease their unfair activities, such as importing, marketing, and selling the infringing goods.

Depending on the circumstances, the Commission's authority to issue a general exclusion order may be found in section 337(d)(2) or 337(g)(2).

Section 337(d)(2) provides that:

The authority of the Commission to issue an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that--

- (A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or
- (B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

19 U.S.C. § 1337(d)(2).

Section 337(g)(2) provides that:

In addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning

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a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be issued if--

- (A) no person appears to contest an investigation concerning a violation of the provisions of this section,
- (B) such a violation is established by substantial, reliable, and probative evidence, and
- (C) the requirements of subsection (d)(2) of this section are met.

19 U.S.C. § 1337(g)(2).

Read together, section 337(g)(2) supplements the authority granted to the Commission under section 337(d)(2), empowering it to issue a general exclusion order when “no person appears to contest an investigation concerning violation of this section,” if certain conditions are met. Given that several respondents have appeared to contest the current investigation, and have settled with complainant or entered into consent orders, the Commission’s authority to issue a general exclusion order in this investigation arises under section 337(d)(2). The standards for finding a violation of 337 under section 337(d)(2) are the same as those for finding a violation under 337(g)(2). *See Certain Sildenafil or any Pharmaceutically Acceptable Salt Thereof, such as Sildenafil Citrate, and Products Containing Same*, Inv. 337-TA-489, Comm’n Op. at 5 (Feb. 2004) (violation of 337 under section 337(d) must be supported by “reliable, probative, and substantial evidence”; there is no difference between this standard and the “substantial, reliable, and probative evidence” standard of 337(g)(2)).

The Commission has noted in previous cases that the criteria of section 337(d)(2) “do not differ significantly” from the factors in *Certain Airless Paint Spray Pumps and Components*

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Thereof, Inv. 337-TA-90, USITC Pub. 1199, 216 U.S.P.Q. 465 (USITC 1981) (“*Spray Pumps*”). *Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same*, Inv. No. 337-TA-372, USITC Pub. 2694 (May 1996), Comm’n Op. at 5 (“*Neodymium-Iron-Boron Magnets*”). The Federal Circuit has clarified that section 337(d)(2) is not an adoption of the Commission’s policy objectives expressed in *Spray Pumps*, but rather was added to the statute to comply with obligations under the General Agreement on Tariffs and Trade. *See Vastfame Camera, Ltd. v. Int’l Trade Comm’n*, 386 F.3d 1108, 1113 (Fed. Cir. 2004). Nonetheless, the *Spray Pumps* factors are still useful in determining whether to issue a general exclusion order, though care must be taken to ensure the statutory criteria are met.

In *Spray Pumps*, the Commission held that a complainant seeking a general exclusion order must show both (1) a widespread pattern of unauthorized use of its patented invention and (2) certain business conditions from which one might reasonably infer that foreign manufacturers other than the respondents to the investigation may attempt to enter the U.S. market with infringing articles. *Spray Pumps*, 216 U.S.P.Q. at 473. The Commission stated that the evidence which might be presented to prove a “widespread pattern of unauthorized use of the patented invention” included:

- (1) a Commission determination of unauthorized importation into the United States of infringing articles by numerous foreign manufacturers; or
- (2) the pendency of foreign infringement suits based upon foreign patents which correspond to the domestic patent in issue;
- (3) other evidence which demonstrates a history of unauthorized use of the patented invention.

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Spray Pumps, 216 U.S.P.Q. at 473.

The Commission determined that evidence which might be presented to prove the “business conditions” criterion included:

- (1) an established demand for the patented product in the U.S. market and conditions of the world market;
- (2) the availability of marketing and distribution networks in the United States for potential foreign manufacturers;
- (3) the cost to foreign entrepreneurs of building a facility capable of producing the patented article;
- (4) the number of foreign manufacturers whose facilities could be retooled to produce the patented articles; or
- (5) the cost to foreign manufacturers of retooling their facility to produce the patented articles.

Spray Pumps, 216 U.S.P.Q. at 473.

Although *Spray Pumps* involved claims of patent infringement, the Commission has applied the same test with respect to trademark infringement. *Certain Agricultural Tractors and Components Thereof*, Inv. No. 337-TA-487, Comm’n Op. 7-8 (“The criteria and factors set forth in *Spray Pumps* apply *mutatis mutandis* to trademark cases.”); *Certain Cigarettes and Packaging Therefor*, Inv. No. 337-TA-424, USITC Pub. No. 3366 (Nov. 2000), Comm’n Op. at 6-7. The statutory provisions of section 337(d)(2), of course, apply to all investigations under section 337.

The Commission may, in lieu of or in addition to an exclusion order, issue a cease and desist order directing persons found to have violated section 337 “to cease and desist from engaging in the unfair methods or acts involved.” 19 U.S.C. § 1337(f). Cease and desist orders

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are warranted with respect to domestic respondents that maintain commercially significant U.S. inventories of the infringing product. *See, e.g., Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293, USITC Pub. 2391 at 37- 42 (June 1991). Domestic respondents who have defaulted are presumed to maintain significant inventories of infringing products in the United States and thus may be subject to cease and desist orders. *Certain Video Game Systems*, Inv. No. 337-TA-473, Comm'n Op. at 2 (December 2,2002); *Certain Agricultural Tractors*, Inv. No. 337-TA-380, USITC Pub. 3026 at 32, n.124 (March 1997).

B. The ALJ's RD

As part of his ID finding a violation of section 337 (Order No. 22), the ALJ issued an RD. In his RD, the ALJ addressed the requirements for the issuance of a general exclusion order that appear in section 337(d)(2) and made findings that bear directly on those additional requirements, couching much of his analysis in terms of *Spray Pumps*.

With respect to the “widespread pattern of unauthorized use” criterion, the ALJ found that Fluke had demonstrated the existence of a widespread pattern of violation with respect to the registered trademark at issue. ID at 21-22. The ALJ noted evidence that the accused products are widely available in large quantities for sale throughout the country, in sales catalogs, brochures and websites. Fluke identified numerous foreign suppliers that specialize in manufacturing the infringing products and noted that it was often unable to identify the foreign manufacturer of an infringing product. The ALJ also noted that the IA has identified several district court actions resulting in findings of infringement of Fluke's mark. ID at 21.

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With respect to the “business conditions” criterion, the ALJ reviewed the evidence which showed that Fluke digital multimeters are popular products with great demand and that there are numerous infringers that have extensive inventories of infringing products that are offered for sale within an established network that includes the internet, mass-mailed catalogs, and brochures. ID at 21. The ALJ noted evidence that it is not difficult for foreign entities to gain access to the U.S. market. Many foreign manufacturers that currently produce non-infringing digital multimeters would be able to quickly and inexpensively start manufacturing infringing digital multimeters that bear Fluke’s color combination trademark and trade dress because of the relative ease and minimal increased costs involved in changing the color of the resin used to make the packaging that encloses the electrical and electronic components of the digital multimeters. ID at 21.

Based on these representations, the ALJ found the “widespread pattern” and “business conditions” criteria of *Spray Pumps* to be satisfied, and he therefore recommended that the Commission issue a general exclusion order if it found a violation of section 337. ID at 13.

With respect to the appropriateness of cease and desist orders, the ALJ found that the two domestic respondents Electronix Express and HandsOnTools maintain significant inventories of digital multimeters in the United States. He thus concluded that cease and desist orders are warranted against those two respondents. ID at 23.

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C. Parties' Submissions

Both Fluke and the IA agree that a general exclusion order should issue and that cease and desist orders should be directed to the defaulting domestic respondents. Citing the relevant findings of the ALJ, Fluke and the IA agree that there is a widespread pattern of unauthorized use of the protected mark and trade dress and that certain business conditions exist from which one might reasonably infer that foreign manufacturers other than the respondents may attempt to enter the U.S. market with infringing goods. Fluke's Submission on Remedy of February 28, 2008 (Fluke Br.) at 7-16; IA's Brief on Remedy of February 28, 2008 (IA Br.) at 3-6.

The IA also submits, in his reply brief, that it has been routine to include a reporting provision in such orders (as the IA proposes) to apprise the Commission at the earliest possible time as to whether a particular trademark or trade dress is no longer in use, and therefore, may be subject to cancellation. IA Reply Br. at 2-3.

D. Analysis and Determination

We agree with the ALJ and the parties that the requirements for the issuance of a general exclusion order pursuant to section 337(d)(2) have been met. The record indicates that unauthorized uses have occurred in the importation and sale of infringing products manufactured by the respondents and numerous other multimeter producers. The record also shows an established U.S. market for goods practicing the trademark and trade dress at issue, and the availability of U.S. marketing and distribution networks for such goods. ID at 21. The ALJ's findings that there is a widespread pattern of unauthorized use and that certain business

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conditions make it likely that other foreign producers will enter the U.S. market with infringing articles make it apparent that the statutory criteria for issuance of a general exclusion order have been satisfied.

Further, we agree with the IA's recommendation that there be a reporting requirement and therefore have determined to issue a general exclusion order including a reporting provision to require Fluke to show that it continues to use the trademark and trade dress at issue in U.S. commerce and that they have not been abandoned, canceled, or rendered invalid or unenforceable.

As the ALJ found, domestic respondents HandsOnTools and Electronix Express defaulted during the course of the investigation. Domestic respondents who have defaulted are presumed to maintain significant inventories of infringing products in the United States and are likewise subject to cease and desist orders. *Certain Video Game Systems*, Inv. No. 337-TA-473, Comm'n Op. at 2 (December 2, 2002); *Certain Agricultural Tractors*, Inv. No. 337-TA-380, USITC Pub. 3026 at 32 n.124 (March 1997). We see no reason to depart from Commission practice or the ALJ's recommendation, and we therefore have determined to issue cease and desist orders to these two defaulting domestic respondents.

III. THE PUBLIC INTEREST

In addition to the criteria discussed above, the Commission's authority to issue any exclusion order is conditioned on consideration of the public interest. 19 U.S.C. § 1337(d)(1). Specifically, on finding a violation, the Commission may issue an exclusion order unless

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after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

Similarly, the Commission may elect not to issue a cease and desist order if it finds that such an order would be contrary to the public interest. 19 U.S.C. § 1337(f). The public interest analysis does not concern whether there is a public interest in issuing a remedial order, but whether issuance of such an order will adversely affect the public interest. *Certain Agricultural Vehicles*, Inv. No. 337-TA-487, Comm'n Op. at 17.

Fluke notes that excluding respondents' infringing digital multimeters and products with multimeter functionality will not harm the public interest because these products do not directly affect the public health or welfare, and such products are not the type that have raised public interest concerns in the past. It also contends that competition policy in the United States favors the protection of United States intellectual property rights and that the United States market for digital multimeters can easily be supplied by Fluke and other non-infringing alternatives. *See* Fluke Br. at 17-18.

The IA similarly argues that entry of a general exclusion order would not be contrary to the public interest. The IA agrees with Fluke that there is no evidence that U.S. demand for the digital multimeters cannot be met by Fluke and its legitimate competitors, *i.e.*, manufacturers and retailers of digital multimeters that do not infringe Fluke's trademark or trade dress. IA Br. at 8. The IA submits that the sole effect of a general exclusion order would be to exclude infringing look-alike devices. IA Br. at 8. Lastly, the IA observes that digital multimeters bearing Fluke's

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color combination trademark and trade dress are simply not the types of products that raise any particular public interest concerns. IA Br. at 9.

The Commission is not aware of any evidence on the record indicating that the issuance of a general exclusion in this investigation would be contrary to the public interest. The exclusion order and cease and desist orders only bar entry of infringing digital multimeters, *i.e.*, those bearing a particular trademark or trade dress. Non-infringing digital multimeters may still be imported. The record indicates that U.S. demand for digital multimeters can be met by Fluke and its non-infringing competitors.

IV. BOND DURING PERIOD OF PRESIDENTIAL REVIEW

During the 60-day period of Presidential review, imported articles otherwise subject to a remedial order are entitled to conditional entry under bond, pursuant to section 337(j)(3). 19 U.S.C. § 1337(j)(3). The amount of the bond is specified by the Commission and must be an amount sufficient to protect the complainant from any injury. *Id.*, 19 C.F.R. § 210.50(a)(3).

The ALJ noted that Fluke asserted that there is no fixed difference between what the various respondents charge for their infringing products as each respondent sets its price differently. In circumstances where price comparisons would be complicated and difficult, the ALJ indicated that the Commission has typically set the bond at 100 percent of the entered value of the infringing imported products. ID at 23-24. Accordingly, the ALJ recommended a bond of 100 percent of the entered value of respondents' accused products during the Presidential review period.

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Both Fluke and the IA agree with the ALJ's recommendation that, in the absence of clear price differentials between Fluke's products and the infringing imports, a bond of 100 percent of entered value should be entered. *See* Fluke Br. at 19; IA Br. at 10.

We find that the record lacks sufficient information to calculate the difference in price between Fluke's digital multimeters and the infringing products. As noted by the ALJ, the record does not indicate clear differences in price between the two. When the pricing information is unclear, the Commission has set the amount of the bond at 100 percent of entered value. *See Neodymium-Iron-Boron Magnets*, Inv. No. 337-TA-372, USITC Pub. 2694 (May 1996), Comm'n Op. at 15. In accordance with the recommendation of the ALJ and Commission precedent, we determine to set the bond at 100 percent of the entered value of infringing digital multimeters during the 60-day Presidential review period.

By order of the Commission.



Marilyn R. Abbott
Secretary to the Commission


Issued: June 3, 2008

**CERTAIN DIGITAL MULTIMETERS, AND PRODUCTS
WITH MULTIMETER FUNCTIONALITY**

337-TA-588

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **COMMISSION OPINION** has been served by hand upon the Commission Investigative Attorney, Anne Goalwin, Esq., and the following parties as indicated, on June 4, 2008


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

**ON BEHALF OF COMPLAINANT FLUKE
CORPORATION:**

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Cecilia H. Gonzalez, Esq.
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Washington, DC 20004
P-202-783-0800

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 Via Overnight Mail
 Via First Class Mail
 Other: _____

RESPONDENTS:

HandsOnTools
1001-A E Harmony Rd., Suite 332
Fort Collins, Colorado 80525

Via Hand Delivery
 Via Overnight Mail
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 Other: _____

Electronix Express
a division of R.S.R. Electronics, Inc.
365 Blair Road
Avenel, NJ 07001

Via Hand Delivery
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 Via First Class Mail
 Other: _____

Sherry Robinson
LEXIS-NEXIS
8891 Gander Creek Drive
Miamiburg, OH 45342

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Ronnita Green
West Group
901 Fifteenth Street, NW
Suite 230
Washington, DC 20005

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

In the Matter of

**CERTAIN DIGITAL MULTIMETERS,
AND PRODUCTS WITH MULTIMETER
FUNCTIONALITY**

Investigation No. 337-TA-588

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE GRANTING
COMPLAINANT'S MOTION FOR SUMMARY DETERMINATION OF VIOLATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination ("ID") of the presiding administrative law judge ("ALJ") granting complainant's motion for summary determination of violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"), as to four defaulting respondents in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.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: The Commission instituted this investigation on November 13, 2006, based on a complaint filed on October 6, 2006, and supplemented on October 27 and 30, 2006, by Fluke Corp. of Everett, Washington, alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital multimeters and products with multimeter functionality by reason of infringement of United States Trademark Registration No. 2,796,480 and also by reason of infringement of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States. 71 *Fed. Reg.* 661940 (November 13, 2006). Complainant requested that the Commission issue a general exclusion order and cease

and desist orders. The complaint named eighteen respondents in China, Hong Kong, and the United States. Fourteen respondents were terminated from the investigation by settlement agreement, consent order, or both. The four remaining respondents have been found in default.

On July 3, 2007, complainant filed a motion seeking summary determination of violation of section 337. Complainant also requested that the ALJ recommend a general exclusion order, cease and desist orders against respondents HandsOnTools and Electronix Express, and a 100 percent bond for entry the Presidential review period. On July 13, 2007, the Commission investigative attorney filed a response in support of the motion, supplemented on July 18. No other responses were received.

On January 14, 2008, the ALJ issued the subject ID (Order No. 22) granting complainant's motion for summary determination of a violation of section 337 as to the four defaulting respondents. He recommended issuance of a general exclusion order, issuance of cease and desist orders against Electronix Express and HandsOnTools, and that the amount of bond for temporary importation during the Presidential review period be set at 100 percent of the entered value of the articles concerned. No petitions for review were filed and the Commission has determined not to review the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The

Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should be no more than twenty-five (25) pages and should address the recommended determination by the ALJ on remedy and bonding. The complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on February 28, 2008. Reply submissions must be filed no later than the close of business on March 6, 2008. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.42-46 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42-46.

By order of the Commission.



Marilyn R. Abbott
Secretary to the Commission

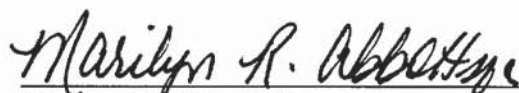
Issued: February 12, 2008

**CERTAIN DIGITAL MULTIMETERS, AND PRODUCTS
WITH MULTIMETER FUNCTIONALITY**

337-TA-588

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE GRANTING COMPLAINANT'S MOTION FOR SUMMARY DETERMINATION OF VIOLATION** has been served by hand upon the Commission Investigative Attorney, Anne Goalwin, Esq., and the following parties as indicated, on February 12, 2008.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

**ON BEHALF OF COMPLAINANT FLUKE
CORPORATION:**

Peter E. Moll, Esq.
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RESPONDENTS:

Circuit Specialist, Incorporated
220 S Country Club Drive #2
Mesa, AZ 85210

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

Elenco Electronics, Inc.
150 W. Carpenter Avenue
Wheeling, IL 60090

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

Jameco Electronics
1355 Shoreway Road
Belmont, CA 94002

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

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

In the Matter of

CERTAIN DIGITAL MULTIMETERS,
AND PRODUCTS WITH MULTIMETER
FUNCTIONALITY

Investigation No. 337-TA-588

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION FINDING ONE RESPONDENT IN DEFAULT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation finding a respondent in default.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.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: This investigation was instituted on November 13, 2006, based on a complaint filed by Fluke Corporation (“Fluke”) of Everett, Washington. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital multimeters and products with multimeter functionality by reason of infringement of United States Trademark Registration No. 2,796,480 and also by infringement of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complaint further alleges that an industry exists in the United States with respect to the asserted intellectual property rights. The complainant requests that the Commission issue a permanent general exclusion order and permanent cease and desist orders. The complaint named Altadox, Inc. of Arcadia, California;

and desist orders. The complaint named eighteen respondents in China, Hong Kong, and the United States. Fourteen respondents were terminated from the investigation by settlement agreement, consent order, or both. The four remaining respondents have been found in default.

On July 3, 2007, complainant filed a motion seeking summary determination of violation of section 337. Complainant also requested that the ALJ recommend a general exclusion order, cease and desist orders against respondents HandsOnTools and Electronix Express, and a 100 percent bond for entry the Presidential review period. On July 13, 2007, the Commission investigative attorney filed a response in support of the motion, supplemented on July 18. No other responses were received.

On January 14, 2008, the ALJ issued the subject ID (Order No. 22) granting complainant's motion for summary determination of a violation of section 337 as to the four defaulting respondents. He recommended issuance of a general exclusion order, issuance of cease and desist orders against Electronix Express and HandsOnTools, and that the amount of bond for temporary importation during the Presidential review period be set at 100 percent of the entered value of the articles concerned. No petitions for review were filed and the Commission has determined not to review the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The

Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should be no more than twenty-five (25) pages and should address the recommended determination by the ALJ on remedy and bonding. The complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on February 28, 2008. Reply submissions must be filed no later than the close of business on March 6, 2008. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.42-46 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42-46.

By order of the Commission.



Marilyn R. Abbott
Secretary to the Commission

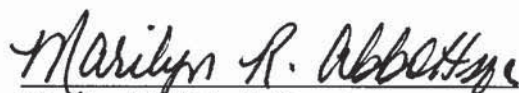
Issued: February 12, 2008

**CERTAIN DIGITAL MULTIMETERS, AND PRODUCTS
WITH MULTIMETER FUNCTIONALITY**

337-TA-588

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE GRANTING COMPLAINANT'S MOTION FOR SUMMARY DETERMINATION OF VIOLATION** has been served by hand upon the Commission Investigative Attorney, Anne Goalwin, Esq., and the following parties as indicated, on February 12, 2008.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

**ON BEHALF OF COMPLAINANT FLUKE
CORPORATION:**

Peter E. Moll, Esq.
Cecilia H. Gonzalez, Esq.
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HOWREY LLP
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Via Hand Delivery
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ON BEHALF OF RESPONDENT VELLEMAN, INC.:

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**ON BEHALF OF RESPONDENT PARTS EXPRESS
INTERNATIONAL, INC.:**

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Dayton, OH 45402-1290
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F-937-224-4311

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RESPONDENTS:

Circuit Specialist, Incorporated
220 S Country Club Drive #2
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Elenco Electronics, Inc.
150 W. Carpenter Avenue
Wheeling, IL 60090

- Via Hand Delivery
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Jameco Electronics
1355 Shoreway Road
Belmont, CA 94002

- Via Hand Delivery
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- Other: _____

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN DIGITAL MULTIMETERS, AND
PRODUCTS WITH MULTIMETER
FUNCTIONALITY**

Inv. No. 337-TA-588

**ORDER NO. 22: INITIAL DETERMINATION GRANTING FLUKE CORPORATION'S
MOTION FOR SUMMARY DETERMINATION OF VIOLATION AND TERMINATING
THE INVESTIGATION**

(January 14, 2008)

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I. Background

On July 3, 2007, Complainant Fluke Corporation (“Fluke”) filed a motion (588-021) for summary determination concerning violation of Section 337, Remedy, Bonding and the Public Interest. On July 13, 2007, the Commission Investigative Staff (“Staff”) filed a response in support of the motion. No other responses were received. On July 18, 2007, Staff filed an unopposed motion (588-022) to supplement/clarify its response, which is hereby granted.

On October 6, 2006, Fluke filed a complaint with the Commission pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. The complaint, which was supplemented on October 27th and 30th, alleged violations of Section 337 by all named respondents in connection with the importation, sale for importation, and sale within the United States after importation of certain digital multimeters (“DMMs”) and products with multimeter functionality by reason of infringement of U.S. Trademark Registration No. 2,796,480 (“the ‘480 mark”) and also by reason of infringement of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States. On November 6, 2006, the Commission issued a Notice of Investigation that was subsequently published in the Federal Register on November 13, 2006.¹

The Notice of Investigation listed eighteen entities as respondents. Of these, four were found to be in default. The four defaulting respondents are as follows: HandsOnTools, Shenzhen Hongda Electronic Co., Ltd. (“Hongda”), Sinometer Instruments Co. Ltd. (“Sinometer”), and Electronix Express, a division of R.S.R. Electronics, Inc. (“Electronix”).² The other fourteen respondents were terminated from this investigation as follows:

¹ See 71 Fed. Reg. 66,195.

² See Order No. 8 (March 1, 2007) and Commission Notice (March 28, 2007), Order No. 15 (May 17, 2007) and Commission Notice (June 14, 2007).

By Settlement Agreement: Jameco Electronics (“Jameco”)³
Circuit Specialists, Inc. (“Circuit Specialists”)⁴
Digitek Instruments Co. (“Digitek”) and Electronic Specialties, Inc.
 (“Electronic Specialties”)⁵; and
Central Purchasing LLC and Harbor Freight Tools (collectively
 “Harbor Freight”).⁶

By Consent Order: Elenco Electronics, Inc. (“Elenco”);⁷
Altadox, Inc. (“Altadox”), Techbuys, LLC (“Techbuys”), and Kaito
 Electronics, Inc. (“Kaito”);⁸ and
 Precision Mastech Enterprises Co. (“Mastech”), Shenzhen Everbest
 Machinery Industry Co. (“Everbest”), and Shenzhen Victor Hi-Tech
 Co., Ltd. (“Victor Hi-Tech”).⁹

By Settlement Agreement and Consent Order: Velleman, Inc. (“Velleman”)¹⁰; and
 Parts Express, International (“Parts Express”).¹¹

Thus, none of the named respondents have contested Fluke’s allegations that they have violated and continue to violate Section 337.

Fluke’s motion seeks, in addition to a summary determination of a Section 337 violation and the existence of a domestic industry, the entry of a general exclusion order against all infringing digital multimeters.¹²

³ See Order No. 12 (May 1, 2007) and Commission Notice (May 24, 2007).

⁴ See Order No. 13 (May 1, 2007) and Commission Notice (May 24, 2007).

⁵ See Order No. 18 (June 14, 2007) and Commission Notice (July 3, 2007).

⁶ See Order No. 21 (July 31, 2007) and Commission Notice (August 30, 2007).

⁷ See Order No. 9 (April 30, 2007) and Commission Notice (May 24, 2007).

⁸ See Order No. 11 (April 30, 2007) and Commission Notice (May 22, 2007).

⁹ See Order No. 19 (July 18, 2007) and Commission Notice (August 10, 2007).

¹⁰ See Order No. 14 (May 10, 2007) and Commission Notice (May 31, 2007).

¹¹ See Order No. 17 (June 14, 2007) and Commission Notice (July 3, 2007).

¹² See Memorandum at 58-66.

II. Legal Standards

The standards for granting a motion for summary determination under 19 C.F.R. § 210.18(a) are well-recognized and need no repetition here.¹³ It is useful to note that, for the purposes of the instant motion, the Commission's Rules require an appropriate, properly supported, unopposed motion for summary determination to be granted.¹⁴

Under Section 337(d)(1), if the Commission determines as a result of an investigation that there is a violation of Section 337, the Commission is authorized to issue exclusion orders after considering certain public interest factors.¹⁵ Section 337(d)(2) further provides that exclusion orders are to be "limited to persons determined by the Commission to be violating this section"—that is, limited exclusion orders—unless the Commission finds that a general exclusion order against all unfairly imported accused products, regardless of the identity of the importer, either (i) "is necessary to prevent circumvention of an exclusion order limited to products of named persons" or (ii) is required because "there is a pattern of violation of this section and it is difficult to identify the source of infringing products."¹⁶ The conditions set forth in subsection (d)(2) are referred to generally as the "*Spray Pumps*" factors, after the Section 337 investigation that established them prior to their 1988 codification into that subsection.¹⁷ The Commission has held that the requirements of subsection (d)(2) are, for all intents and purposes, the same as those that the Commission articulated

¹³ See 19 C.F.R. § 210.18(b); also see, e.g., *Anchor Wall Systems, Inc. v. Rockwood Retaining Walls, Inc.*, 340 F.3d 1298, 1306 (Fed. Cir. 2003) ("*Anchor*").

¹⁴ See 19 C.F.R. § 210.18(c) ("If the opposing party does not so respond, a summary determination, if appropriate, *shall* be rendered against the opposing party." (emphasis added)).

¹⁵ See 19 U.S.C. § 1337(d)(1).

¹⁶ See 19 U.S.C. § 1337(d)(2).

¹⁷ *Certain Airless Paint Spray Pumps and Components Thereof*, Inv. No. 337-TA-90, USITC Pub. No. 1199, Commission Opinion, 216 U.S.P.Q. 465 (U.S.I.T.C., November 1981) ("*Spray Pumps*").

in *Spray Pumps*.¹⁸ The Commission has found that in an investigation where there are defaulting and settling respondents, the Commission has the authority to issue a general exclusion order under Section 337(d)(2).¹⁹

III. Discussion

As to the substance of the motion, Fluke has amply established by “reliable, probative, and substantial evidence”²⁰ that a violation has occurred and continues to occur, and that the *Spray Pumps* conditions for issuing a general exclusion order are present in this case. Fluke’s motion include declarations from three individuals, including: (1) James Cavoretto, Senior Vice President and Chief Technology Officer for Fluke,²¹ (2) Robert D. Thikoll, Associate Vice President for Research at the University of Texas at Austin,²² and (3) Dr. Robert A. Peterson, Vice President of Worldwide Operations at Fluke.²³ In addition, Fluke has submitted a statement of undisputed material facts which includes 262 statements of fact, none of which Staff objects to. Accordingly, as there are no objections to the proposed statement of Undisputed material facts, they are hereby fully adopted by the undersigned and attached hereto as Appendix A.

¹⁸ See *Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same*, Inv. No. 337-TA-372, USITC Pub. No. 2964, Commission Opinion at 5-6, 1996 WL 1056324 (U.S.I.T.C., May 1996) (“*Magnets*”).

¹⁹ See *Certain Sildenafil or any Pharmaceutically Acceptable Salt Thereof, such as Sildenafil Citrate, and Products Containing Same*, Inv. No. 337-TA-489, Commission Opinion (February 6, 2004) (“*Sildenafil*”).

²⁰ See 5 U.S.C. § 556.

²¹ Exhibit 1 (Cavoretto Declaration).

²² Exhibit 8 (Thikoll Declaration).

²³ Exhibit 57 (Peterson Declaration).

A. Importation

Concerning importation of the accused products, the exhibits, which include receipts and packaging samples, demonstrate that each of the defaulting respondents has imported accused digital multimeters and products with multimeter functionality into the United States.²⁴ Staff concurs with these findings.²⁵

While Fluke also asserts that there is no dispute that the settled respondents also import the accused articles into the United States,²⁶ Staff notes that the activities of a settled respondent cannot provide a basis for a determination of violation of Section 337.²⁷ The undersigned agrees with Staff and only addresses importation by the defaulting respondents. The undersigned finds that, based on the evidence presented, there is no genuine issue of material fact with respect to whether the accused articles have been imported into the United States by the defaulting respondents.

B. Registered Trademark and Trade Dress

1. The Mark

U.S. Trademark Registration No. 2,796,480 (“the ‘480 mark’”) was registered on December 23, 2003.²⁸ Fluke is the owner of the ‘480 mark that “consists of the colors dark gray and yellow as applied to the goods.” The description of goods associated with the trademark includes “electronic

²⁴ See Memorandum at 22-23. For respondent HandsOnTools, see exhibits 14, 27, and 28. For respondent Hongda, see exhibit 22, 29, and 30. For respondent Sinometer, see exhibit 21 and 31. For respondent Electronix Express, see exhibit 15 and 32.

²⁵ See Staff’s Response at 29-30.

²⁶ See Memorandum at 23-25.

²⁷ See Staff’s Response at 29 citing *Certain Plastic Molding Machines with Control Systems having Programmable Operating Interfaces Incorporating General Purpose Computers, and Components Thereof II*, Inv. No. 337-TA-462, Comm’n Op. at 19-22 (USITC Pub. 3,609, July 2003) (“*Plastic Molding*”).

²⁸ See Exhibit 1 (Cavoretto Dec.) at ¶ 32, Exhibit 1-36.

test and measuring instruments and devices, and portable electronic tests tools, namely, digital multimeters.” According to Fluke, the Fluke trademark is encompassed within the breath of the Fluke trade dress and refers to both as the “Fluke Mark.” While Staff asserts that Fluke’s registration is less than five years of age and that the validity of the mark may be contested, Staff notes that the ‘480 mark is unchallenged in this investigation and therefore presumed to be valid.²⁹ The undersigned agrees with Fluke and Staff that the Fluke trademark is valid³⁰ and that Fluke’s trademark is encompassed within Fluke’s trade dress.

2. Trade Dress

Fluke asserts that the Fluke trade dress consists of a contrasting color combination of dark-colored body or face and a contrasting yellow border, frame, molding, overlay, holster or perimeter. According to Fluke, the yellow surrounding the body or face of the product is referred to as “Fluke Yellow.”³¹ Staff agrees.³² Accordingly, the undersigned agrees that Fluke’s trade dress consists of a contrasting color combination of dark-colored body or face and a contrasting yellow border, frame, molding, overlay, holster or perimeter.

Fluke asserts that its trade dress is entitled to protection because it is nonfunctional and distinctive, *i.e.*, has acquired secondary meaning.³³ Staff agrees.³⁴

²⁹ See Staff’s Response at 6 citing 15 U.S.C. § 1065.

³⁰ See Section III (E), *infra*.

³¹ See Exhibit 26.

³² See Staff’s Response at 6-7, 13-15 at n. 7. While Staff’s Response initially asserted that Fluke’s trade dress should be limited to configurations where at least the majority of the border, holder, and/or holster is of a contrasting yellow color, in its motion to supplement/clarify its response, Staff withdrew the statement that the trade dress asserted by Fluke must be limited in light of the partial yellow border around the Protek device. See Staff’s Supplemental Response at 2.

³³ See Memorandum at 26.

³⁴ See Staff’s Response at 8-16.

The party asserting a trade dress right bears the burden of establishing that the trade dress is nonfunctional and distinctive.³⁵ A feature of an alleged trade dress is functional and therefore not entitled to protection where “the exclusive use of [the feature] would put competitors at a significant non-reputation-related disadvantage.”³⁶ An alleged trade dress is also deemed functional where “it is essential to the use or purpose of the device or when it affects the cost or quality of the device.”³⁷ The Commission has adopted the test set forth in *Morton-Norwich*,³⁸ to determine “functionality”:

Morton-Norwich listed the following factors as relevant consideration in determining functionality: (1) whether the utilitarian advantages of the design are touted in advertising; (2) whether the particular design results from a comparatively simple or cheap method of manufacture; (3) whether there exists a utility patent which discloses the utilitarian advantage of the design for which the burden of proving that the matter sought to be protected is not functional production is sought; and (4) whether commercial alternatives are available. The foregoing factors are aids in determining functionality; no single factor is dispositive.³⁹

As to nonfunctionality, Fluke asserts that under the four-part test set forth in *Morton-Norwich*, there is no genuine dispute of material fact that the evidence shows that Fluke’s trade dress is nonfunctional. Specifically, Fluke clarifies that it is not seeking to preclude the use of the color yellow or dark gray on a DMM. Rather, Fluke is seeking to protect the distinct and unique combination of those colors found on Fluke’s products. Accordingly, Fluke asserts that the relevant inquiry is whether the particular combination of those colors on Fluke’s product is functional. Fluke

³⁵ 15 U.S.C. § 1125(a)(3); see *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*, 529 U.S. 205, 210-11 (2000) (“*Wal-Mart*”).

³⁶ *Traffix Devices, Inc. v. Marketing Displays, Inc.*, 523 U.S. 23, 43 (2001) (“*Traffix Devices*”) citing *Oualitex Co. v. Jacobson Products Co.*, 514 U.S. 159, 165 (1995) (“*Oualitex*”).

³⁷ *Traffix*, 523 U.S. at 33, citing *Oualitex*, 514 U.S. at 159 and *Inwood Laboratories v. Ives Laboratories, Inc.*, 856 U.S. 844, 520, n. 10 (1982) (“*Inwood*”).

³⁸ *In re Morton-Norwich Products, Inc.*, 671 F. 2d 1332 (CCPA 1982) (“*Morton-Norwich*”).

³⁹ *Certain Woodworking Machines*, Inv. No. 337-TA-174, Comm’n Op. at 7-8 (USITC Pub. 1,979 1987) at 154 (“*Woodworking Machines*”).

asserts that, while it has spent millions on advertising its products, it has never touted the color combination as having any utilitarian advantage.⁴⁰

Staff agrees that the Fluke trade dress is non-functional.⁴¹ According to Staff, Fluke has never advertised the color combination of its DMMs as having any utility, other than to identify Fluke as the source of the device. Staff notes that, in two district court actions, Fluke's color combination trade dress/mark was expressly found to be "non-functional." In addition, Staff notes that the trademark registration is prima facie evidence of its non-functionality.⁴²

As to secondary meaning, Fluke asserts that its trade dress has acquired secondary meaning under Commission precedent set forth in *Certain Luggage Products*, which includes examining the following factors:

- (1) degree and manner of use;
- (2) exclusivity of use;
- (3) length of use;
- (4) degree and manner of sales, advertising and promotional activities;
- (5) effectiveness of the effort to create secondary meaning;
- (6) evidence of deliberate copying; and
- (7) evidence that actual purchasers associate the trade dress with a particular source.⁴³

In addition, Fluke asserts that the Commission recognizes survey evidence as one of the most common and persuasive means to establish secondary meaning.⁴⁴ Fluke also notes that evidence of

⁴⁰ See Memorandum at 33; Exhibit 1 (Cavoretto Dec.) at ¶¶ 28, 35; Exhibits 1-20, 1-23 through 1-28.

⁴¹ See Staff's Response at 8.

⁴² See Staff's Response at 8-9.

⁴³ *Certain Luggage Products*, Inv. No. 337-TA-243, Initial Determination at 28-29 (December 29, 1986) ("*Luggage Products*"); *Certain Ink Markers & Packaging Thereof*, Inv. No. 337-TA-522, Order No. 30 at (July 25, 2005) ("*Ink Markers*").

⁴⁴ See Memorandum at 27 citing *Ink Markers*, Order No. 30 at 27.

extensive use and advertising over a substantial period of time may itself be sufficient to establish secondary meaning.⁴⁵

Based on the evidence, Fluke asserts that evidence of its extensive use and advertising over a substantial period of time is sufficient to establish secondary meaning. Specifically, Fluke asserts that it has sold [] of DMMs bearing the asserted trade dress during the period 1988-2006, which includes sales of [] in the United States since 2002.⁴⁶ As for advertising, Fluke asserts that it has spent [] promoting the Fluke trade dress through a variety of media, including catalogues, trade shows, cooperative advertising with wholesalers, and various promotional activities.⁴⁷

In addition to extensive use and advertising over a substantial period of time, Fluke also submits survey evidence to support a finding of secondary meaning. Fluke asserts that, to evaluate the credibility and reliability of consumer survey evidence, the Commission has relied upon the following eight factors, referred to as the “Survey Factors”:

- (1) examination of the proper universe;
- (2) a representative sample drawn from the proper universe;
- (3) a correct mode of questioning interviewees;
- (4) recognized experts conducting the survey;
- (5) accurate reporting of data gathered;
- (6) sample design, questionnaire, and interviewing in accordance with generally accepted standards of objective procedure and statistics in the field of surveys;
- (7) sample design and interviews conducted independently of the attorneys; and

⁴⁵ See Memorandum at 27 citing *Clamp Mfg. Co. v. Enco Mfg. Co.*, 870 F.2d 512, 517 (9th Cir. 1989) (“*Clamp*”); *Vision Sports, Inc. v. Melville Corp.*, 888 F.2d 609, 615 (9th Cir. 1989) (“*Vision Sports*”).

⁴⁶ See Memorandum at 27, Exhibit 1 (Cavoretto Dec) at ¶¶ 16, 21, 24.

⁴⁷ See Memorandum at 27, Exhibit 1 (Cavoretto Dec) at ¶ 29.

- (8) the interviewers, trained in this field, have no knowledge of the litigation or the purpose for which the survey is to be used.⁴⁸

Fluke asserts that the report submitted by its expert, Dr. Peterson, meets the above survey factors.⁴⁹ Specifically, Fluke asserts that Dr. Peterson surveyed the proper universe by targeting individuals who were purchasers or potential purchasers of digital multimeters for professional applications from eleven different metropolitan areas. From this universe, two independent samples were surveyed.⁵⁰ Based on the results of the survey, Fluke asserts that the Fluke trade dress has acquired secondary meaning, as a minimum of 63% of the survey participants indicated that a masked Fluke DMM was a Fluke DMM.⁵¹

Staff agrees that the Fluke's trade dress is distinctive and has acquired a secondary meaning based on Fluke's extensive advertising and sales, consumer studies, and the two district court decisions in Fluke's favor.⁵²

The undersigned agrees with both Fluke and Staff that Fluke's trade dress is entitled to protection because it is nonfunctional and distinctive, *i.e.*, has acquired secondary meaning, based on the standards set forth above.

⁴⁸ See Judicial Conference of the United States Handbook of Recommended Procedures for the Trial of Protracted Cases (West Ed. 1970); *Ink Markers*, Inv. No. 337-TA-522, Order No. 30 at 27-28, quoting *Certain Two-Handle Centerset Faucets and Escutcheons, and Components Thereof*, Inv. No. 337- TA-422, Initial Determination at 23 (USITC Pub. 3332, July 2000) ("*Faucets*").

⁴⁹ See Memorandum at 28-30; Exhibit 8 (Peterson Dec.).

⁵⁰ See Memorandum at 29; Exhibit 8 (Peterson Dec.) at ¶¶ 10-11; Exhibit 8-3-4.

⁵¹ See Memorandum at 30; Exhibit 8 (Peterson Dec.); Exhibit 8-3 and 8-7.

⁵² See Staff's Response at 10-16.

C. Infringement

The test for infringement of a trademark is whether the accused mark is “likely to cause confusion, or to cause mistake or to deceive.”⁵³ The undersigned finds that Fluke’s motion establishes, and Staff concurs, that there is a violation by reason of the respondents’ importation into the United States, sale for importation in the United States, or sale within the United States after importation, of certain digital multimeters and products with multimeter functionality that infringe the ‘480 mark.⁵⁴

For purposes of determining whether there is a likelihood of confusion, the Commission has adopted the following factors set forth in the Restatement of Torts § 729, which were adopted in *Certain Strip Lights* and *Certain Chemiluminescent Compositions*, including:

- (a) the degree of similarity between the designation and the trademark or trade name in
 - (i) appearance,
 - (ii) pronunciation of the words used;
 - (iii) verbal translation of the pictures or designs involved; or
 - (iv) suggestion;
- (b) the intent of the actor in adopting the designation;
- (c) the relation in use and manner of marketing between the goods and services marketed by the actor and those marketed by the other; and
- (d) the degree of care likely to be exercised by purchasers.⁵⁵

Fluke asserts that there is strong evidence that there is likelihood of confusion based on the Restatement of Torts factors, as evidenced by Dr. Peterson’s survey.⁵⁶ Specifically, as to the similarity of the marks, Fluke asserts that the degree of similarity of respondents DMMs and Fluke’s

⁵³ 15 U.S.C. § 1114(1).

⁵⁴ See Memorandum at 39-45; Staff’s Response at 18-20.

⁵⁵ See *Certain Strip Lights*, Inv. No. 337-TA-287, Unreviewed Initial Determination (June 27, 1989); Comm’n Order (September 28, 1989) (“*Strip Lights*”); *Certain Chemiluminescent Compositions and Components Thereof and Methods of Using, and Products Incorporating the Same*, Inv. No. 337-TA-285, USITC Pub. 2370, Comm’n Op. (March 1991) (“*Chemiluminescent*”).

⁵⁶ See Memorandum at 39.

DMMs are nearly identical.⁵⁷ As to the intent of the actor, Fluke asserts that there is circumstantial evidence that the defaulting respondents intended to trade on Fluke's mark by selling products with a dark-colored body and a yellow holster or frame.⁵⁸ As to the assimilability in the use and manner of marketing, Fluke asserts that the defaulting respondents' DMMs and Fluke's DMMs are marketed to perform the same basic functionality and are sold through the same channels to the same customers.⁵⁹ As to the degree of care likely to be exercised, Fluke asserts that consumers of DMMs and products with multimeter functionality are likely to vary in the level of sophistication, resulting in varying levels of degree of care to be exercised by the purchaser.⁶⁰ Fluke also asserts that the survey evidence regarding the Chauvin Arnoux DMM further supports a finding of likelihood of confusion.⁶¹

Staff agrees with Fluke. According to Staff, with respect to the similarity of the marks, a review of the comparison photographs of Fluke DMMs with those of the defaulting respondents demonstrates a nearly identical appearance of devices. With respect to the intent of the actor, Staff asserts that the respondents could have selected any color or combination of colors, but selected Fluke's color combination, which gives rise to circumstantial evidence of intent. With respect to the similarity in the manner of marketing between the goods and services marketed by the actor and those marketed by others, Staff asserts that Fluke has demonstrated that its products and those of the defaulted respondents are marketed to perform the same type of functions and are sold through the

⁵⁷ See Memorandum at 40-41; *compare* Physical Exhibit 1 from Complaint with Physical Exhibits B (Sinometer), C (Hongda), D (Electronix Express), and E (HandsOnTools).

⁵⁸ See Memorandum at 41-43.

⁵⁹ See Memorandum at 43-44; Exhibit 1 (Cavoretto Dec.) ¶ 36.

⁶⁰ See Memorandum at 44.

⁶¹ See Memorandum at 44-45; Exhibit 8 (Peterson Dec.) at ¶¶ 25, 27-28.

same channels of trade, targeting the same customers. With respect to the degree of care likely to be exercised, Staff agrees with Fluke that there is a varying level of degree of care exercised by the purchaser, including individuals that use the devices in their professions as well as ordinary consumers.⁶² Furthermore, Staff agrees that the survey evidence supports a finding of likelihood of confusion.⁶³ Based on all of the above, Staff agrees that Fluke has carried its burden of establishing that there a likelihood of confusion between Fluke’s DMMs and the accused DMMs.⁶⁴

The undersigned agrees that, under the Restatement of Torts factors set forth by Fluke and Staff, that Fluke has carried its burden on trademark infringement that there is a likelihood of confusion between the respondents’ DMMs and Fluke’s DMMs. Furthermore, Fluke has shown that its trade dress is nonfunctional and has achieved secondary meaning. As the ‘480 mark is very similar to and is encompassed within the breath of Fluke’s trade dress, in considering likelihood of confusion, it was only necessary for the undersigned to conduct a single infringement analysis, which is applicable to both the Fluke’s trademark and trade dress.

D. Domestic Industry & Injury

Fluke’s motion, with Staff’s concurrence, demonstrates that a domestic industry exists that practices the ‘480 mark in accordance with Section 337(a)(2) and (a)(3).⁶⁵ Under Section 337, in order to prove a violation of Section 337 in an investigation based on registered trademarks, a complainant must demonstrate that a domestic industry exists or is in the process of being established. An industry in the United States exists (1) if the domestic articles are “protected by the

⁶² See Staff’s Response at 19-20.

⁶³ See Staff’s Response at 20.

⁶⁴ See Staff’s Response at 20.

⁶⁵ See 19 U.S.C. §§ 1337(a)(2) and (a)(3); Memorandum at 45-57; Staff Response at 20-29.

trademark . . . concerned” and (2) if there exists in the United States with respect to those articles one or more of the following:

1. Significant investment in plant and equipment;
2. Significant employment of labor or capital; or
3. Substantial investment in the exploitation of the patent, including engineering, research and development, or licensing.⁶⁶

Fluke’s motion satisfies both the first, so-called “technical prong” and the second, so-called “economic prong” of the domestic industry requirements. Because the same devices are covered by Fluke’s registered trademark and its trade dress, one industry exists for the purposes of Section 337.

Fluke’s motion, with Staff’s concurrence, also demonstrates injury to their domestic industry. Under Section 337, injury to a domestic industry must be shown to prove a violation of Section 337 based on trade dress infringement.⁶⁷

Regarding the technical prong, the Thikoll declaration, along with the physical exhibits, and submitted photographs, show that Fluke’s model 87 DMM is protected by the trademark at issue and its asserted trade dress.⁶⁸ Thikoll’s declaration also asserts that the asserted trademark is featured in Fluke’s advertising materials and that significant investments are made in advertising the trademark on Fluke’s DMMs.⁶⁹ Based on the above, the undersigned agrees that Fluke has met its burden of establishing that its digital multimeters and products with multimeter functionality are protected by

⁶⁶ See 19 U.S.C. § 1337(a)(3).

⁶⁷ See 19 U.S.C. § 1337(a)(1).

⁶⁸ See Memorandum at 47-48; Physical Exhibit 1 to Complaint; Exhibit 26; Staff’s Response at 21.

⁶⁹ See Memorandum at 48; Exhibit 57 (Thikoll Dec.) at ¶ 10.

the trademark and trade dress at issue and that there are no genuine issues of material fact in dispute regarding satisfaction of the technical prong of the domestic industry requirement

Regarding the economic prong, the Thikoll declaration shows that Fluke has satisfied the economic prong of the domestic industry requirement under the first two prongs.⁷⁰ Thikoll's declaration states that Fluke's model 87 DMM are produced at its Evergreen Way facility in Everett, Washington.⁷¹ Fluke purchased the Evergreen Way Facility in []⁷² The initial cost of the production equipment purchased for use in the Evergreen Way Facility was []⁷³ Fluke has also shown that it has invested [] in the equipment used in the Evergreen Way Facility.⁷⁴ According to Fluke, at least [] of the [] can be allocated specifically to the model 87 DMM.⁷⁵

The evidence shows that the Evergreen Way Facility is substantially dedicated to the production of DMMs, including DMMs bearing the asserted trademark and trade dress. []

[]⁷⁶ Approximately [] of the Evergreen Way Facility is dedicated to []⁷⁷

In addition, Fluke has over [] in the Evergreen Way Facility who have devoted over [] to manufacture products with a []⁷⁸ According to Fluke,

⁷⁰ See Memorandum at 49-51; Staff's Response at 24-45.

⁷¹ See Exhibit 57 (Thikoll Dec.) at ¶ 5.

⁷² See Exhibit 57 (Thikoll Dec.) at ¶ 5.

⁷³ See Exhibit 57 (Thikoll Dec.) at ¶ 5.

⁷⁴ See Exhibit 57 (Thikoll Dec.) at ¶ 7.

⁷⁵ See Exhibit 57 (Thikoll Dec.) at ¶ 7.

⁷⁶ See Exhibit 57 (Thikoll Dec.) at ¶ 7.

⁷⁷ See Exhibit 57 (Thikoll Dec.) at ¶ 6.

⁷⁸ See Exhibit 57 (Thikoll Dec.) at ¶ 8.

approximately [] dedicated over [] annually to manufacture the model 87 DMM.⁷⁹

Based on the above, the undersigned agrees that Fluke has met its burden of establishing that its digital multimeters and products with multimeter functionality are protected by the trademark and trade dress at issue and that there are no genuine issues of material fact in dispute regarding satisfaction of the economic prong of the domestic industry requirement based on a significant investment in plant and equipment and a significant employment of labor or capital.

As for Fluke's trade dress, Fluke must prove that the respondents' practices have caused substantial injury to the domestic industry or that the presence of the accused imported products demonstrate relevant conditions or "circumstances from which probable future injury can be inferred."⁸⁰ In addition, Fluke must prove nexus between the respondents' unfair acts and the injury to the domestic industry.⁸¹

The Commission has considered a "broad range of indicia" in determining whether unfair acts have the effect of substantially injuring the domestic industry, including:

- (1) the respondent's volume of imports and penetration into the market,
- (2) the complainant's lost sales,
- (3) underselling by the respondent, and
- (4) the complainant's declining production, profitability and sales.⁸²

⁷⁹ See Exhibit 57 (Thikoll Dec.) at ¶ 8.

⁸⁰ *Certain Electric Power Tools, Battery Cartridges & Battery Chargers*, Inv. No. 337-T A-284, Unreviewed Initial Determination at 246, 248 (USITC Pub. 2389 (February 20, 1990)) ("Power Tools"); see also *Textron, Inc. v. U.S. Int'l Trade Comm'n*, 753 F.2d 1019, 1029 (Fed. Cir. 1985) ("*Textron*").

⁸¹ *Power Tools* at 246; see also *Certain Nut Jewelry and Parts Thereof*, Inv. No. 337-TA-229, Initial Determination at 33, (USITC Pub. 1929, (Nov. 1986)) (unreviewed in relevant part) ("*Nut Jewelry*").

⁸² *Power Tools*, at 246; *Nut Jewelry*, at 32.

Additionally, the Commission has considered harm to goodwill and reputation in determining if there has been substantial injury.⁸³

The injury requirement can also be met “[w]hen an assessment of the market in the presence of the accused imported products demonstrates relevant conditions or circumstances from which probable future injury can be inferred.”⁸⁴ Such circumstances may include:

- (1) foreign cost advantages and production capacity,
- (2) the ability of the imported product to undersell the domestic product, or
- (3) substantial foreign manufacturing capacity combined with the respondent’s intention to penetrate the United States market.⁸⁵

Additionally, the threatened injury must be “substantive and clearly foreseen” and the complainant must show a causal connection between the respondent’s unfair act and the alleged future injury.⁸⁶

Fluke asserts that the evidence supports a finding that Fluke has a domestic industry in DMMs and products with multimeter functionality as to the trade dress at issue in this investigation and that there are relevant conditions or circumstances from which probable future injury can be inferred exists in this investigation. Specifically, Fluke asserts that the evidence shows that the defaulting respondents’ and Fluke’s DMMs and/or products with multimeter functionality having the trade dress at issue are available in some of the same catalogs and websites, and therefore are found in the same distribution channels and directly compete with each other.⁸⁷ Fluke also asserts

⁸³ *Certain Compound Action Metal Cutting Snips and Components Thereof*, Inv. No. 337-TA-197, USITC Pub. 1831, Initial Determination at 102 (April 18, 1985) (“*Cutting Snips*”).

⁸⁴ *Power Tools*, at 248; see also *Certain Air Impact Wrenches*, Inv. No. 337-TA-311, Unreviewed Initial Determination at 138 (May 6, 1991) (USITC Pub. 2419, June 18, 1991) (“*Air Impact Wrenches*”).

⁸⁵ *Air Impact Wrenches*, at 139; see also *Certain Methods of Extruding Plastic Tubing*, Inv. No. 337-TA-110, Comm’n Op. at 15 (USITC Pub. 1287, Sept. 1982) (“*Plastic Tubing*”).

⁸⁶ See *Air Impact Wrenches*, at 139.

⁸⁷ See Memorandum at 53; Exhibits 3, 5, and 11.

that the defaulting respondents' products are sold at significantly lower prices than Fluke's products.⁸⁸ Staff agrees with Fluke.⁸⁹ In addition, Fluke asserts that the evidence shows that the respondents have a large manufacturing capacity and maintain large inventories of DMMs in the United States.⁹⁰ Fluke also asserts that there is harm to its goodwill and business reputation. Fluke asserts that its name is widely known and that consumers associate the Fluke name with quality, reliability, and ruggedness. Consumers, believing that they are purchasing a Fluke DMM when purchasing a respondents' DMM, may experience post-purchase confusion and experience dissatisfaction with the DMM's performance and durability.⁹¹

The undersigned agrees with Fluke and Staff that the evidence of record clearly shows that the defaulted respondents' importation and sale after importation into the United States of infringing DMMs and products with multimeter functionality has caused and/or threatens to cause injury to Fluke's domestic industry. Furthermore, because Fluke has demonstrated that its '480 mark and its common law trade dress are valid and infringed, it has shown that its domestic industry has been substantially injured.⁹²

E. Validity

The '480 mark has been registered by Fluke with the U.S. Patent and Trademark Office.⁹³ Registered trademarks are presumed valid and the registrant is presumed to have the exclusive right

⁸⁸ See Memorandum at 53-54; compare Exhibit 97 [] with Exhibits 21 (Sinometer's DMM for \$29.95), 15 (Electronix Express' DMM for \$32.952), 22 (Hongda's DMM for \$124.99), and 14 (HandsOnTools' DMM for \$41.15 and \$15.98).

⁸⁹ See Staff's Response at 27-28.

⁹⁰ See Memorandum at 54-55; Exhibits 33, 38, 41, and 58

⁹¹ See Memorandum at 56 citing Exhibit 8 (Peterson Dec.); Exhibit 8-6; Exhibit 1 (Cavoretto Dec.) at ¶ 36.

⁹² *Power Tools*, at 247.

⁹³ See Memorandum at 36; Exhibit 1 (Cavoretto Dec.) at ¶ 32, Exhibit 1-36.

to use the registered mark.⁹⁴ The undersigned finds that there is no evidence that would rebut the presumption that the trademark at issue is valid.

F. Conclusion on Violation of Section 337

In accordance with the foregoing reasons, Fluke has demonstrated by “substantial, reliable, and probative evidence,” with the concurrence of Staff, that there is a violation of Section 337 by reason of the defaulting respondents’ importation into the United States, sale for importation, and sale within the United States after importation, of certain digital multimeters and products with multimeter functionality that infringe the ‘480 mark and Fluke’s trade dress.

IV. Recommended Determination on Remedy and Bonding

Finally, following the issuance of an initial determination on violation of Section 337, the administrative law judge must also issue a recommended determination concerning the appropriate remedy in the event that the Commission finds a violation of Section 337 and the amount of the bond to be posted by the respondents during the 60-day period of Presidential review of the Commission’s action under Section 337(j).⁹⁵

A. General Exclusion Order

In the case of a finding of violation of Section 337 by defaulting respondents under Section 337(g)(2), a general exclusion order may issue if the requirements of Section 337(d)(2) are met.⁹⁶ As mentioned earlier, these are the *Spray Pumps* factors, under which a general exclusion order is warranted if: “(A) a general exclusion from entry of articles is necessary to prevent circumvention

⁹⁴ 15 U.S.C. §§ 1057(c), 1115.

⁹⁵ 19 C.F.R. § 210.42(a)(1)(ii).

⁹⁶ 19 U.S.C. § 1337(g)(2)(C).

of an exclusion order limited to products of named persons; or (B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.”⁹⁷

Under *Spray Pumps*, a two-pronged test must be satisfied for issuance of a general exclusion order. There must be (1) “a widespread pattern of unauthorized use of [the] patented invention;” and (2) “certain business conditions from which one might reasonably infer that foreign manufacturers other than respondents to the investigation may attempt to enter the U.S. market with infringing articles.”⁹⁸ The following factors are considered relevant to demonstrating a widespread pattern of unauthorized use:

1. Commission determination of unauthorized importation into the United States of infringing articles by numerous foreign manufacturers; and
2. other evidence which demonstrates a history of unauthorized foreign use of the patented invention.⁹⁹

The Commission has also identified a number of factors relevant to showing “certain business conditions,” including:

1. an established market for the patented product in the U.S. market and conditions of the world market; and
2. the availability of marketing and distribution networks in the United States for potential foreign manufacturers.¹⁰⁰

Both Fluke and Staff agree that there is a widespread pattern of unauthorized use in that numerous foreign entities manufacture infringing digital multimeters and products with multimeter functionality. In support, Fluke points to evidence that the accused products are widely available in

⁹⁷ 19 U.S.C. § 1337(d)(2).

⁹⁸ *Spray Pumps*, 216 U.S.P.Q. at 473.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

large quantities for sale throughout the country, as reflected in sales catalogs, brochures and websites.¹⁰¹ Fluke also identifies numerous foreign suppliers that specialize in manufacturing infringing products and notes that in many other instances, it was unable to identify the foreign manufacturer of an infringing product.¹⁰² Staff agrees that there is a widespread pattern of unauthorized use, citing to several district court actions resulting in findings of infringement, along with its own analysis of the settled respondents' products.¹⁰³

Concerning the presence of "business conditions" influencing such unfair imports, Fluke and Staff agree that Fluke digital multimeters are popular products with great demand and that there are numerous infringers that have extensive inventories of infringing products that are offered for sale within an established network that includes the internet, mass-mailed catalogs, and brochures.¹⁰⁴ It is not difficult for foreign entities to gain access to the U.S. market, as many foreign manufacturers that currently produce non-infringing digital multimeters would be able to quickly, and relatively inexpensively, start manufacturing infringing digital multimeters because of the relative ease and almost no increase in cost of changing the color of the resin used to make the packaging that encloses the electrical and electronic components of the digital multimeters.¹⁰⁵

Fluke also asserts that there are no public interest factors that weigh against the issuance of a general exclusion order and that the issuance of a general exclusion order would further the public interest by eliminating potentially unsafe products from the market.¹⁰⁶ Staff does not address any

¹⁰¹ See Memorandum at 59 citing Exhibits 3, 25, 54-56, 59-71.

¹⁰² See Memorandum at 61-62.

¹⁰³ See Staff's Response at 30.

¹⁰⁴ See Memorandum at 64-65.

¹⁰⁵ See Memorandum at 66; Staff's Response at 33.

¹⁰⁶ See Memorandum at 67-68.

public interest factors, as such factors are not to be considered by the ALJ when rendering a determination on violation unless expressly ordered to by the Commission.¹⁰⁷ The undersigned agrees with Staff and will leave it to the Commission to consider any public interest factors.

Based on these considerations, it is readily apparent that the *Spray Pumps* factors have been satisfied by Fluke in this case and that there are no public interest factors that weigh against the issuance of a general exclusion order. Accordingly, the undersigned finds that a general exclusion order is warranted.

B. Cease and Desist

Under Section 337(f)(1), the Commission may issue a cease and desist order in addition to, or instead of, an exclusion order. Cease and desist orders are warranted primarily when the respondent maintains a commercially significant inventory of the accused products in the United States.¹⁰⁸

Fluke asserts that respondents Electronix Express and HandsOnTools have a commercially significant inventory of DMMs in the United States and that a cease and desist order would be appropriate.¹⁰⁹ Staff agrees, noting that under Commission precedent, domestic respondents who have defaulted are presumed to maintain significant inventories of infringing products in the United States.¹¹⁰

¹⁰⁷ See Staff's Response at 1 citing 19 C.F.R. § 210.50.(b)(1).

¹⁰⁸ *Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293, Commission Opinion (March 15, 1990), 15 U.S.P.Q.2d 1263, 1277-79 ("*Crystalline*").

¹⁰⁹ See Memorandum at 67.

¹¹⁰ See Staff's Response at 34 citing *Certain Video Game Systems, Accessories, and Components Thereof*, Inv. No. 337-TA-473, Comm'n Op. at 2 (December 24, 2002) ("*Video Games*") and *Certain Agricultural Tractors Under 50-Power Take-Off Horsepower*, Inv. No. 337-TA-380, USITC Pub. 3,026, Comm'n Op. at 32, n. 124 (June 1997) ("*Agricultural Tractors*").

The undersigned agrees that the evidence shows that respondents Electronix Express and HandsOnTools maintain significant inventories of DMMs probes in the United States and that a cease and desist order is warranted against these defaulting respondents.

C. Bond

In accordance with Section 337(j), the accused products are entitled to entry under bond during the 60-day period of Presidential review.¹¹¹ To the extent possible, the bond should be an amount that would be sufficient to protect the complainant from any injury.¹¹²

Although the Commission frequently sets the bond on the basis of a difference in sales prices between the patented domestic product and the infringing product,¹¹³ Fluke points out that there is no set difference between what the various respondents charge for their infringing products as each respondent sets its price differently. Accordingly, Fluke asserts that a price comparison would be complicated and difficult to calculate accurately and requests that the bond be set at 100% of the entered value of the accused products.¹¹⁴

Where it has been difficult or impossible to calculate a bond based upon price differentials, and particularly where the respondents fail to provide discovery, the Commission has set the bond at 100 percent of the entered value of the infringing imported product.¹¹⁵ Fluke and Staff concur,¹¹⁶

¹¹¹ 19 U.S.C. § 1337(j).

¹¹² 19 C.F.R. § 210.50(a)(3).

¹¹³ See *Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. No. 2949, Commission Opinion at 24-25 (USITC, January 1996) (“*Microsphere Adhesives*”).

¹¹⁴ See Memorandum at 68-69.

¹¹⁵ See *Certain Oscillating Sprinklers, Sprinkler Components, and Nozzles*, Inv. No. 337-TA-448, Limited Exclusion Order at 4-5 (March 2002) (“*Sprinklers*”) (setting bond at 100% of entered value with respect to the products of a defaulting respondent).

¹¹⁶ See Memorandum at 69; Staff’s Response at 35.

and the undersigned recommends as appropriate, that the bond in this instance should be set at 100 percent of the entered value of respondents' accused products during the Presidential review period.

V. Conclusion

Accordingly, Fluke's motion (588-021) for summary determination that there is a violation of Section 337 is hereby granted. Furthermore, the undersigned recommends the issuance of a general exclusion order.


Pursuant to 19 C.F.R. § 210.38(d), the Administrative Law Judge hereby CERTIFIES to the Commission the record in this investigation.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues herein.

Within seven days of the date of this document, each party shall submit to the Office of the Administrative Law Judges a statement as to whether or not it seeks to have any portion of this document deleted from the public version. The parties' submissions may be made by facsimile and/or hard copy by the aforementioned date.

Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office a copy of this document with red brackets indicating any portion asserted to contain confidential business information. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.



Charles E. Bullock
Administrative Law Judge

APPENDIX A

STATEMENT OF UNDISPUTED MATERIAL FACTS

CONTAINS CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable Charles E. Bullock
Administrative Law Judge

In the Matter of)

CERTAIN DIGITAL MULTIMETERS, AND)
PRODUCTS WITH MULTIMETER)
FUNCTIONALITY)

Investigation No. 337-TA-588

**COMPLAINANT FLUKE CORPORATION'S
STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Ground Rule 3.3, Complainant Fluke Corporation ("Fluke") submits that there is no genuine issue as to the following facts, which entitle Fluke summary determination as a matter of law on all issues.

I. HISTORY OF THE FLUKE COLOR COMBINATION

A. Digital Multimeters

1. Handheld digital multimeters ("DMMs") are portable instruments that measure various electrical parameters, such as current, voltage, and resistance, and display the measurements digitally on the instrument's screen. (Exhibit 1, Cavoretto Decl. ¶ 3).

2. DMMs are typically used to conduct various tests and measurements for the installation, maintenance, and repair of electrically controlled equipment. *Id.*

3. A wide range of individuals use DMMs, including electricians, plant maintenance technicians, automotive mechanics, and electrical engineers in a field setting, such as a construction and manufacturing sites, where others can observe the DMM in operation. *Id.*

4. DMMs come in various shapes and sizes. (*Id.* ¶ 4).

5. In terms of colors, there is no functional requirement that a DMM be made in any particular color or color combination. (Exhibit 108, Smith Dep. At 26-11-38:19, 40:15-19; Exhibit 109, Pathek Dep. At 13:2-5; Exhibit 110, Wood Dep. At 36:24-37:5).

6. There are no industry standards, government regulations or trade association regulations that provide that: (i) “yellow” or a color combination including “yellow” denote safety; or (ii) requires a DMM to be made in such a color or color combination. (Exhibit 108, Smith Dep. At 26-11-38:19, 40:15-19; Exhibit 109, Pathek Dep. At 13:2-5; Exhibit 110, Wood Dep. At 36:24-37:5).

7. There is no significant difference in the cost to manufacture or distribute a DMM with a dark body and yellow holster, border, frame, molding, overlay, or perimeter as opposed to another color combination. (Exhibit 1, Cavoretto Decl. ¶ 34).

8. A multitude of color and color combinations exist with respect to DMMs, even DMMs manufactured by some of the respondents in this case. (*Id.* ¶4; Exhibit 2, 3, 5, 99, 100).

B. Background to Fluke’s Color Combination Trade Dress

9. Founded in 1948, Fluke is a worldwide leader in the design, manufacture and sale of test instruments including DMMs and products with multimeter functionality. (Exhibit 1, Cavoretto Decl. ¶ 5).

10. Since at least 1969, Fluke has manufactured and distributed DMMs in the United States bearing a contrasting color combination, consisting of a dark-colored body or face with a contrasting yellow border, frame, molding, overlay, holster or perimeter – the “Fluke Trade Dress”. (*Id.* ¶ 8).

11. In 1969, Fluke first manufactured and distributed a DMM with a dark face and yellow border/frame. The product was marketed as the Fluke Model 8125A DMM. (*Id.* ¶ 9).

12. The 8125A DMM remained in production from 1969 until approximately the early 1980s. (*Id.*)

C. Introduction of the 80 Series

13. In 1985, Fluke began development of a product that would ultimately be sold as the Fluke "80 Series" DMMs, which would revolutionize the hand held test instrument industry. (*Id.* ¶ 11).

14. In designing this product, one of Fluke's goals was to develop a distinctive and unique visual appearance that would stand above and apart from the DMMs currently in the marketplace. (*Id.* ¶ 12).

15. After extensive market research and testing, Fluke designed a DMM that would provide users with a distinctive look consisting of a contrasting dark-colored body or face with a contrasting yellow holster. (*Id.* ¶¶ 12,15)

16. In 1988, Fluke introduced the "80 Series" handheld DMMs in the Fluke Trade Dress. (*Id.* ¶ 13).

17. Immediately after it was introduced, the "80 Series" was recognized by the industry as a dramatic evolution in the development of DMMs in terms of its appearance and performance. (*Id.* ¶ 13).

18. The 80 Series was the winner of various design awards. (Exhibit 1, Cavoretto Decl. ¶ 13 and Exhibits 2-6 thereto).

19. The introduction of the Fluke 80 Series received a great deal of coverage in trade press. (Exhibit 1, Cavoretto Decl. ¶ 13 and Exhibits 7, 21 thereto).

20. Fluke's 80 Series DMMs are manufactured in and have been extensively sold, distributed, advertised, and promoted throughout the United States. (Exhibit 1, Cavoretto Decl. ¶ 14 and Exhibits 81-8 thereto).

21. []

22. []

23. Fluke has extensively advertised its 80 Series DMMs in industry publications and promoted them at hundreds of local and national trade shows. (*Id.*)

24. Fluke's 80 Series has been prominently featured in Fluke's catalogs, product brochures and has been the subject of numerous articles in trade magazines and news reports. (*Id.* ¶ 18 and Exhibits 7-18, 20-21 thereto).

D. Expansion of the Trade Dress to Fluke's Family of DMMs

25. []

26. []

27. []

28. []

29. Subsequent to the introduction of the 80 Series, Fluke began manufacturing, distributing, promoting and advertising over 40 other different DMM models in the Fluke Trade Dress, including Fluke's 10 Series, 20 series, 70 Series, 110 Series, 170 Series and 180 Series of DMMs. (*Id.* ¶ 20).

30. []

31. These other DMMs in the Fluke Trade Dress have been extensively sold, advertised and promoted. (Exhibit 1; Cavoretto Decl. ¶ 22).

32. [

33. The Fluke Trade Dress extends well beyond DMMs. (*Id.* ¶ 23).

34. Fluke manufactures and distributes a wide variety of other test instruments with multimeter functionality in the Fluke Trade Dress, including insulation testers and process calibration tools. (*Id.*)

35. [

36. These other electronic test instruments in the Fluke Trade Dress have been extensively sold, advertised and promoted. (Exhibit 1, Cavoretto Decl. ¶ 26).

37. Fluke has also made and distributed in the Trade Dress a wide variety of other test instruments. (*Id.* ¶ 25).

38. [

39. [

40. [

41. Fluke now uses its distinctive yellow and dark color as a way of distinguishing itself in the market. For example, Fluke uses yellow and dark colors on its brochures, advertising and its merchandise. (Exhibit 1, Cavoretto Decl. ¶ 28 and Exhibits 20, 23-38 thereto).

42. In the test instrument industry, trade shows are a popular means of promoting and advertising products. (Exhibit 1, Cavoretto Decl. ¶ 30)

43. Many U.S. retailers and distributors attend multiple trade shows both in the United States and abroad. (*Id.*)

44. Fluke promotes its DMMs and products with multimeter functionality extensively at trade shows. (*Id.* and Exhibits 23-28, 30-35 thereto)

45. Flukes's trade show booth takes advantage of the Fluke Trade Dress by using this color combination so that attendees know where Fluke is at the show. (Exhibit 1, Cavoretto Decl. ¶ 29 and Exhibits 27 and 28 thereto).

46. [

47. The distinctive Fluke Trade Dress is widely recognized by consumers and clearly associated with Fluke. (*Id.* ¶ 6).

48. Fluke's DMMs are considered the "Cadillac" of DMMs. (*Id.* ¶ 6).

49. Consumers associate the Fluke name with quality, reliability, and ruggedness. (*Id.* ¶ 6; Exhibit 6 ¶ 5; Exhibit 8, Peterson Decl. at Exhibit 6 at 1).

50. [

51. [

52. [

53. [

54. [

]]

E. Enforcement of Fluke's Trade Dress

55. With the commercial success of the 80 Series, others began to outright copy Fluke's Trade Dress. (*Id.* ¶ 31).

56. In response to others copying the Trade Dress, Fluke began to enforce its Trade Dress rights in the United States through a series of trademark infringement actions brought in Federal Court. *Id.*

57. In 1996, Fluke sought a preliminary injunction against defendant Tektronix, Inc: *Fluke Corporation v. Tektronix, Inc.*, Civ No. 2:96 CV 00966 (W.D.Was.) ("*Tektronix*"). (*Id.*)

58. In *Tektronix*, Judge Rothstein of the United States District Court for the Western District of Washington granted the preliminary injunction finding that Fluke had a protectable Trade Dress and that it was likely to succeed in establishing that Tektronix infringed. (Exhibit 6 at 13).

59. In *Tektronix*, Judge Rothstein found that Fluke's Trade Dress had acquired secondary meaning and was nonfunctional:

It is not necessary to the functioning of [defendants'] DMMs that they use the same contrasting dark, charcoal-colored casing and bright yellow-colored holster as Fluke's 80 Series. There is no significant cost advantage to be gained by the use of those Fluke trade identity symbols. Nor is Tektronix's adoption of Fluke's trade identity symbols otherwise necessary for Tektronix to compete in the market . . . The yellow/charcoal combination is therefore not functional and is protectable.

....

Furthermore, Fluke has established that its yellow-colored holster and charcoal meter color combination has secondary meaning by evidence that Fluke was the first to use this combination and used it exclusively for a number of years, evidence that Tektronix chose virtually identical yellow-

colored holster color for its meters to mimic the Fluke 80 Series color combination, *Vision Sports*, 888 F. 2d at 615; *Fuddruckers*, 826 F.2d at 844; evidence that Fluke has prominently displayed this color-combination in its advertising, *id.*; and evidence that consumers associate the yellow/charcoal combination with Fluke.

(Exhibit 6 at 13-14).

60. Judge Rothstein found that likelihood of confusion would likely be established, because the Fluke DMMs and Tektronix's products were directly competitive, marketed through the same marketing channels, and were virtually identical. (*Id.* at 16).

61. Judge Rothstein found that the DMM products were often used in the field where others can observe them there was likelihood of post-sale confusion. (*Id.* at 17).

62. Fluke pursued the following enforcement actions: *Fluke Corporation v. Wavetek Corporation*, Civ. 2:96 CV 001552; *Fluke Corporation v. Greenlee Textron, Inc.*, Civ 2:96 CV 01552; *Fluke Corporation v. Extech Instruments Corporation*, Civ 2:97 CV 0038; *Fluke Corporation v. Core Industries, Inc. and Amprobe Instrument*, Civ. 2:97 CV 1290; *Fluke Corporation v. AMREL/American Reliance, Inc.*, Civ 2:98 CV 01612; *Fluke Corporation v. AVO International, Inc.*, Civ. 2:97 CV 01811; *Fluke Corporation v. B+K Precision and G.E.M. Illinois, Inc.*, Civ 2:97 CV 001851. (Exhibit 1, Cavoretto Decl. ¶ 31).

63. In each of the enforcement matters, the manufacturer of infringing products either voluntarily or was ordered to cease the infringement of Fluke's Trade Dress. (Exhibits 101-107).

64. In addition to formal actions, Fluke also reached pre-litigation agreements with other infringers to withdraw their infringing products from the marketplace. (Exhibit 1, Cavoretto Decl. ¶ 31).

65. In 2000, Fluke brought another trademark infringement action to protect its trade identity in the United States District Court for the Western District of Washington in *Fluke Corporation v. Chauvin Arnoux SCA, Chauvin Arnoux Holdings*,

Inc. and Chauvin Arnoux, Inc. D/B/A/ AEMC Instruments ("Chauvin Arnoux"), Civ C 00-1039C (W.D. Was.). (Exhibit 7).

66. In *Chauvin Arnoux*, Chief Judge Coughenour also found that Fluke had protectable trade dress:

Fluke's Trade Dress is non-functional as: (a) the Trade Dress is not necessary to the functioning of a DMM; (b) there is no cost advantage to be gained by using the Trade Dress; (c) the Trade Dress does not improve the quality of the DMMs; and (d) there are many alternatives.

....

In 1988, Fluke introduced its 80 Series DMMs (Model Nos. 83, 84 and 87). Fluke designed the DMM with a dark-colored body or face and a contrasting yellow holster. Since 1988, the 80 Series DMMs have been extensively sold, distributed, advertised, and promoted throughout the United States. Subsequent to the introduction of the 80 Series, Fluke manufactured, distributed, promoted, and advertised approximately forty different DMM models in the Trade Dress.

....

Fluke's Trade Dress has acquired secondary meaning since at least 1988, based upon: (a) its sales in the United States; (b) the extensive promotional and advertising of the Trade Dress throughout the United States; and (d) survey evidence indicating that DMM consumers associate the Trade Dress with Fluke.

(See Exhibit 7 ¶¶ 4, 7 and 11).

67. In *Chauvin Arnoux*, Chief Judge Coughenour also found that there was a likelihood of confusion:

There is a likelihood that consumers will confuse [Chauvin Arnoux] DMMs bearing the Fluke Trade Dress with Fluke's DMMs, based upon the following: (a) United States consumers associate the Trade Dress with Fluke; (b) the DMMs at issue are the same type of product; (c) the products are similar in appearance; (d) the DMMs at issue are marketed through the same channels of distribution; (e) survey evidence indicating that a certain percentage of DMM consumers are likely to confuse defendants' CA 5200 Series DMMs with the Fluke 80 Series.

(*Id.* ¶ 13).

F. Survey Evidence

68. In *Chauvin Arnoux*, Dr. Peterson conducted litigation surveys regarding secondary meaning and likelihood of confusion with reference to the Fluke Trade Dress. (Exhibit 8, Peterson Decl. ¶ 7).

69. Dr. Peterson found that Fluke's Trade Dress achieved secondary meaning in the targeted universe in that a minimum of 63 percent of the targeted universe associated the Trade Dress only with Fluke. (*Id.* ¶ 15).

70. The survey expert for the defendants in *Chauvin Arnoux* also found that Fluke's Trade Dress had acquired secondary meaning (the EMC Report). (*Id.* ¶ 29 and Exhibit 6 thereto)

71. The EMC Report indicates that 61.6% of the respondents said the meter was a "Fluke." (*Id.* ¶ 29 and Exhibit 6 at 29, thereto).

72. The defendants' expert in *Chauvin Arnoux* found that 67% of the respondents, who said the meter was Fluke, had made that association for at least the five years prior to the survey. (*Id.*).

73. Based on the strong evidence from previous cases of secondary meaning, Dr. Peterson opined that results of any survey conducted today would have stronger findings, because Fluke has continued to invest in advertising, marketing and promoting its products in the Trade Dress. (Exhibit 8, Peterson Decl. ¶ 26).

74. It has been five and a half years since he conducted his initial secondary meaning research, and since 2002 Fluke has spent substantial money on advertising, with the likely consequence that the Fluke trade dress has become even more recognized. (*Id.*; Exhibit 1, Cavoretto Decl. ¶ 29).

75. In *Chauvin Arnoux*, Dr. Peterson also found that the trade dress of the Chauvin Arnoux (AEMC) DMMs (a similar yellow and gray combination), was likely to be confused with the trade dress of Fluke DMMs in the targeted universe. (*Id.* ¶ 23).

76. In that survey, approximately 43 percent of the individuals shown an AEMC DMM stated that the digital multimeter was a Fluke digital multimeter. An additional 6 percent of the individuals stated that either the AEMC digital multimeter was a Fluke or another brand of digital multimeter, or they believed that the company making the digital multimeter they were shown should have the permission of Fluke to make it. Further, of the 43 percent of the survey participants stating that the AEMC digital multimeter was a Fluke digital multimeter, approximately 72 percent attributed their answer to the trade dress of the AEMC digital multimeter. (Exhibit 8, Peterson Decl. at Exhibit 4).

77. In the instant investigation, Dr. Peterson opined that if he were to conduct the same research using the same methodology today, the percentages would also be higher than those reported in 2002 because the DMMs at issue in this investigation are much more similar in appearance to the Fluke DMM than the Chauvin Arnoux DMMs. (Exhibit 8, Peterson Decl. ¶ 28).

78. Furthermore, after reviewing the expert report submitted by Chauvin Arnoux (the EMC Report) and Fluke's Rebuttal Expert Report of George Mantis, Dr. Peterson noted that the Mastech MY-67 (a control used in the EMC Report) produced confusion levels of 34 percent and 42 percent for the in-person and telephone surveys, respectively. (Exhibit 8, Peterson Decl. at Exhibits 6 and 7).

79. The results of the EMC Report show a likelihood of confusion with the Mastech MY-67, a DMM at issue in the instant investigation. (*Id.*; Physical Exhibit A).

G. Fluke's U.S. Trademark Registration

80. In 2003, Fluke's application for registration of its dark gray and yellow color scheme was registered by the United States Patent and Trademark Office ("USPTO"). (Exhibit 1, Cavoretto Decl. at Exhibit 36).

81. U.S. Trademark Registration No. 2,796,480 (the "Fluke Trademark") consists of the colors dark gray and yellow as applied to the goods." These goods include "electronic test and measuring instruments and devices, and portable electronic tests tools, namely, digital multimeters." (*Id.*)

H. Respondents' Infringing Activity

82. Recently, Fluke has noticed an increase in the number of Fluke look-alike DMMs and other test instruments for sale in the United States. (Exhibit 1, Cavoretto Decl. ¶ 33).

83. Fluke noticed these look-alike DMMs in trade publications, in electronic warehouses, on websites, in distribution catalogs, and at trade shows. (*Id.* ¶ 34).

84. Many of these look-alike products appear to be imported from abroad. (*Id.* ¶ 33).

85. Respondent Mastech, boasts on its website that: "[a]pplying the latest testing equipments from WAVETEK, FLUKE & TEKTRONIX and flexible manufacturing techniques, our product quality is maintained at the highest standard." (Exhibit 9).

86. Look-alike DMMs have a dark body with yellow holster or boot. (Physical Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P and Q).

87. Sometimes, look-alike products can be sold under various brand names even though they appear to be manufactured by the same company, making it difficult to identify the true source of these look-alike products. (Exhibit 1, Cavoretto Decl. ¶ 33).

88. The manufacturers of look-alike products advertise that private labeling is important so that distributors can be known by their own brand. (Exhibit 10).

89. [

]

90. [

]

91. Many manufacturers in China are well aware of the Fluke Trade Dress and Trademark. (*Id.*)

92. Many of these manufacturers were already aware of the success that Fluke has experienced in the United States with the 80 series DMM and other DMMs manufactured in the Fluke Trade Dress, because they were selling products in the United States. (*Id.*)

93. In order to offer an infringing DMM, all these manufacturers had to do was change the color of the holster to yellow. (*Id.*)

94. Changing the color of the boot or holster of a DMMs is any easy change for a manufacturer and not expensive. (*Id.* ¶ 34).

95. Inasmuch as these manufacturers were already making a product the cost to convert to manufacture the yellow holster, was not prohibitive. (*Id.*)

96. When a manufacturer changes its DMM or product with multimeter functionality to look like a Fluke, all the manufacturer has to do is use a different color resin for the holster or boot. (*Id.*)

97. Changing the color of the holster or boot can be made at no cost because resin color costs the same whether it is blue, gray, red or yellow. (*Id.*)

98. Changing the color of the holster or boot can be done very quickly, even in a matter of days. (*Id.*)

99. These look-alike DMMs tend to be low quality DMMs and not very rugged or durable. (*Id.* ¶ 35).

100. This causes Fluke great concern because a low quality DMM is more likely to fail. (*Id.*)

101. When a DMM fails the technician or others can be physically injured. (*Id.*)

102. Inasmuch as Fluke has a reputation for rugged and reliable products, a reputation that is directly associated with the Trade Dress, any failure of such a product in the field will likely be attributed to Fluke or, at the very least, in the mind of the user or an observer, be attributable to any yellow and dark test instrument. (*Id.*)

103. These look-alike products are also sold in the same catalogues, websites and electrical warehouses as Fluke. (*Id.* ¶ 36).

104. These products are also sold at substantially lower prices than Fluke. (*Id.* ¶ 36; Exhibit 3; Exhibits 12-24)

105. Fluke and look-alike products are in direct competition in the DMM market in the United States. (Exhibit 1, Cavoretto Decl. ¶ 36).

106. Every time an end-user purchases the knock-off, it is one less sale for Fluke. (*Id.*)

107. None of the Respondents are licensed to import these infringing products.

108. Respondents are not authorized to import these DMMs or products with multimeter functionality in the Fluke Trade Dress into the United States.

I. Likelihood of Confusion

109. Dr. Peterson stated that if he were to conduct the same investigation using the same methodology today as he used in *Chavin Arnoux*, the likelihood of confusion percentages would be higher than those reported in 2002. (Exhibit 8, Peterson Decl. ¶ 27).

110. In determining that the percentages would be higher, Dr. Peterson carefully reviewed color photographs of the DMMs at issue in this investigation. (*Id.* ¶ 25).

111. Dr. Peterson found the DMMs at issue in this investigation to be more similar to the Fluke DMMs than were the Chauvin Arnoux DMMs with respect to the

yellow color surrounding the dark-body of the meter and the shape, and therefore, he opined that the likelihood of confusion percentage would be much higher. (*Id.* ¶ 28).

II. THE FLUKE TRADE DRESS AND TRADEMARK

A. The Fluke Trade Dress

112. The Fluke Trade Dress consists of a contrasting color combination of a dark-colored body or face and a contrasting yellow border, frame, molding, overlay, holster or perimeter. (Physical Exhibit 1 to the Compliant; Exhibit 26).

B. The Fluke Trademark

113. U.S. Trademark Registration No. 2,796,480 was registered by the United States Patent and Trademark Office on December 23, 2003. (Exhibit 1, Cavoretto Decl. at Exhibit 36 thereto).

114. Fluke is the owner of U.S. Trademark Registration No. 2,796,480, which “consists of the colors dark gray and yellow as applied to the goods.” The description of goods associated with the trademark include “electronic test and measuring instruments and devices, and portable electronic tests tools, namely, digital multimeters.” (*Id.*)

115. The Fluke Trademark is encompassed in the breadth Fluke Trade Dress.

III. IMPORTATION

A. Defaulted Respondents

116. Exhibit 22 is a receipt for the purchase of the DMM marked “Hongda” on its face.

117. The address on the receipt for the Hongda reflects that the DMM was sent to an address in the United States. (Exhibit 22).

118. Hongda’s website, indicates that Hongda has no offices or factories in the United States. (Exhibit 30).

119. Exhibit 21 is a receipt for the purchase of a DMM marked “Sinometer.”

120. The packaging for the Sinometer DMM says it is "Made in China."
(Exhibit 31).

121. Exhibit 21 shows delivery of the Sinometer DMM to an address in the
United States. (Exhibit 21).

122. Exhibit 15 is a receipt of the purchase of a DMM from Electronix Express.

123. The DMM from Electronix Express has the name RSR on the face.
(Exhibit 32).

124. The Electronix Express DMM arrived in a box marked "Made in China."
(Exhibit 32).

125. Exhibit 15 shows delivery of the Electronix Express DMM to an address
in the United States.

B. Settled Respondents

126. [

127. The packaging of the DMM purchased from Elenco states "Made in
China." (Exhibit 34).

128. [

129. The packaging for the Velleman DMM states that the DMM was "Made in
China." (Exhibit 34).

130. [

131. The packaging for the DMM purchased from Harbor Freight Tools
indicates that it was "Made in China." (Exhibit 39).

132. Exhibit 17 is a receipt for the purchase of a DMM from Harbor Freight showing shipment of the product to an address in the United States.

133. [

]

134. [

135.]
[

136. [

]

137. Exhibit 14 is a receipt for the purchase of a DMM from HandsOnTools with the name Electronic Specialties on the DMM. The receipt shows that the DMM was sold to someone in the United States.

138. Exhibit 42 is an invoice for the purchase of a DMM and process calibrator branded "Victor" from Altadox showing delivery to an address in the United States. (Exhibits 42, 43 and 44).

139. On its website, Respondent Victor states that its "manufacturing facilities are located in Shenzhen, China." (Exhibit 10).

140. Exhibit 13 is a receipt for the purchase of a DMM labeled Circuit Specialists with a delivery address in the United States.

141. The DMM purchased from Circuit Specialists is identical to a DMM at page 42 in the Mastech catalog. The cords with this DMM are labeled "Mastech." (Exhibits 2 and 46).

142. According to www.multimeterwarehouse.com, Kaito Electronics sells DMMs manufactured by TekPower, Sinometer and Mastech. (Exhibit 47).

143. Exhibit 19 is a receipt for a DMM purchased from www.multimeterwarehouse.com with the name of Respondent Sinometer on the DMM showing delivery to an address in the United States.

144. Exhibit 48 is a receipt of the purchase of a TekPower DMM from www.multimeterwarehouse.com with the name "Multimeterwarehouse.com" across the top of the receipt, showing delivery to an address in the United States.

145. The DMMs from multimeterwarehouse.com were packaged in boxes labeled "Made in China." (Exhibits 49 and 50).

146. Exhibit 20 is a receipt of the purchase of a DMM marked Velleman from Parts Express to an address in the United States. The packaging for the DMM states "Made in China." (Exhibits 20 and 51).

147. Respondent Precision Mastech Enterprises Co. sells for importation and exports DMMs to the United States. Exhibits 15, 17, 18, 20, 21, 23 and 24 are receipts for the sale of Mastech DMMs, all showing that these products were delivered to an address in the United States. (Exhibits 15, 17, 18, 20, 21, 23, and 24).

148. The packaging for most of the Mastech DMMs indicates the products were "Made in China." (Physical Exhibit A)

149. Respondents Jameco, Circuit Specialists, Parts Express, Kaito, Harbor Freight Tools, Velleman, TechBuys and Electronix Express all sell Mastech DMMs either through private labels or with the Mastech name on the face of the DMM. (Exhibits 15, 17, 18, 20, 21, 23 and 24).

150. Respondent Shenzhen Everbest Machinery Industry Co., Ltd. exports and sells for importation into the United States DMMs. (Exhibit 41).

151. [

]

152. Exhibit 23 is a receipt for the purchase of a DMM sold by TechBuys and shipped to an address in the United States.

153. The DMM from TechBuys arrived in a box that reads "Made in China." (Exhibit 52).

IV. VALIDITY OF THE TRADE DRESS

A. Fluke's Trade Dress Has Acquired Secondary Meaning

1. Flukes's Sales & Advertising

154. [

]

155. [

]

156. From 1988 to the present, Fluke has extensively advertised its DMMs and products with multimeter functionality in a variety of trade and industry publications distributed throughout the United States. (Exhibit 1, Cavoretto Decl. ¶ 22).

157. [

158. [

]

2. Survey Evidence Supports Secondary Meaning

159. Dr. Peterson is an Associate Vice President for Research at The University of Texas at Austin. He held two endowed positions, the John T. Stuart III Centennial Chair and the Charles C. Hurwitz Fellowship. (Exhibit 8, Peterson Decl. ¶ 2).

160. Dr. Peterson has published over 150 books and peer-reviewed articles relating to marketing strategy and management, consumer behavior and marketing research, creating effective questionnaires and surveys and interpreting survey information. (Exhibit 8, Peterson Decl. ¶ 2 and Exhibit 1 thereto).

161. Dr. Peterson has served as an expert in dozens of litigation matters. (Exhibit 8, Peterson Decl. ¶ 5 and Exhibit 2 thereto).

162. As set forth in detail in his expert reports, Dr. Peterson followed generally accepted research procedures, methods and techniques in conducting his research. (*Id.* at ¶ 9-13 and 18-20).

163. Dr. Peterson surveyed the proper universe by targeting individuals who were purchasers or potential purchasers of digital multimeters for professional applications from 11 metropolitan areas. (*Id.*)

164. For the Secondary Meaning survey, two hundred thirty-eight of the targeted individuals were shown one of four different Fluke digital multimeters with the identifying brand and model number masked by tape. Sixty-four of the individuals were shown a Sears, EXTECH, or Protek digital multimeter with the identifying brand and model number masked by tape. All 302 individuals were asked the open-end question, "Who do you think puts out this digital multimeter?" (Exhibit 8, Peterson Decl. ¶ 14).

165. Independent field service professionals asked participants questions that did not suggest an answer and then followed up with open-end questions. (*Id.*)

166. Neither the field service professionals nor the participants were aware of the purpose or the sponsor of the Secondary Meaning survey. (*Id.* at 12).

167. The Secondary Meaning survey and the interviews were conducted independently of the attorneys. (*Id.* at 12).

168. Dr. Peterson found that when shown a masked Fluke digital multimeter, a minimum of 63 percent of the survey participants indicated that the digital multimeter was a Fluke digital multimeter. (Exhibit 8, Peterson Decl. ¶ 15).

169. Of the 63 percent of the survey participants identifying a masked Fluke digital multimeter as a Fluke digital multimeter, at least 93 percent attributed their answer to the trade dress of the Fluke digital multimeter. (Exhibit 8, Peterson Decl. ¶ 15).

170. The defendant expert in *Chauvin Arnoux*, found that 61.6% of the respondents to that survey identified Fluke as the single source when shown a masked Fluke 80 Series DMM. (Exhibit 8, Peterson Decl. ¶ 29 and Exhibit 6 thereto).

171. Dr. Peterson stated that if the secondary meaning survey was repeated today, the results would demonstrate even a higher degree of secondary meaning because increased exposure of the Fluke Mark in the industry through continued sales, marketing and advertising should be given significant weight in supporting the conclusion of the existence of secondary meaning. (Exhibit 8, Peterson Decl. ¶ 26).

3. Additional Evidence of Secondary Meaning

172. In granting Fluke's request for a preliminary injunction in *Tektronix* Judge Rothstein found that the Fluke Trade Dress had acquired secondary meaning. (Exhibit 6 at 17).

173. In 2002, the Chief Judge Coughenour in *Chauvin Arnoux*, found that Fluke acquired secondary meaning in the Trade Dress. (Exhibit 7 at 7).

B. Fluke's Trade Dress is Not Functional

174. [

]

175. Fluke uses the color combination as a way of recognizing the product as a "Fluke". (Exhibit 1, Cavoretto Decl. ¶28, 35; Exhibits 20, 23-28).

176. The color combination is not essential to the functioning of a DMM. (Cavoretto Decl. ¶ 4; Exhibit 108, Smith Dep. at 36:11-38:19, 40:15-19; Exhibit 109, Pathak Dep. at 13:2-5; Exhibit 110, Wood Dep. at 36:24-37:5).

177. There are no industry standards or trade association regulations that provide that: (i) "yellow" or a color combination including "yellow" denote safety; or (ii) requires a DMM to be made in such a color or color combination. (Exhibit 108, Smith Dep. at 36:11-38:19, 40:15-19; Exhibit 109, Pathak Dep. at 13:2-5; Exhibit 110, Wood Dep. at 36:24-37:5).

178. There are other commercially available alternatives to a DMM or product with multimeter functionality using the Fluke Trade Dress. (Exhibit 3 at 17-33; Exhibit 99 at A13, A16-A17 and Exhibit 100 at 10-12).

179. There are numerous other available colors and color combinations for DMMs or products with multimeter functionality. (Exhibit 3 at 17-33; Exhibit 99 at A13, A16-A17 and Exhibit 100 at 10-12).

180. There is no utility patent that discloses the utilitarian advantage of the color combination of the Trade Dress.

181. There is no material difference in the cost to manufacture or distribute DMMs with a yellow holster as opposed to another color holster or in the price ultimately charged to consumers. (Exhibit 1, Cavoretto Decl. ¶ 34).

182. Some of the settled respondents offer their DMMs in multiple color combinations, with no significant difference in retail costs. (Exhibit 2 at 17; Exhibit 3, Exhibit 4, Exhibit 99 at A12, A14 and A16 and Exhibit 100 at 10-12).

183. [

184. In granting Fluke a trademark on the yellow and charcoal color combination, the USPTO found that the Fluke Trade Dress was not functional. (Exhibit 1; Exhibit 36 thereto).

185. Judge Rothstein, in *Tektronix*, addressed the issue of functionality regarding the very same Trade Dress and found that the Trade Dress was not functional (Exhibit 6 at 13-14).

186. Chief Judge Coughenour in *Chauvin Arnoux* found that the Fluke Trade Dress is not functional. (Exhibit 7 ¶ 11).

187. The trademark is registered to Fluke Corporation. (Exhibit 1; Cavoretto Decl. At Exhibit 36 thereto).

V. RESPONDENT'S INFRINGE THE FLUKE MARK

A. Fluke Satisfies The Restatement of Tort Factors

188. The Sinometer DMM has a dark-colored body with a yellow holster. (Physical Exhibit B).

189. The DMM manufactured by Hongda has a dark-colored body surrounded by a yellow holster. (Physical Exhibit C).

190. The DMMs sold by Electronix Express have dark-colored bodies and yellow borders, holsters or frames. (See Physical Exhibit D).

191. The DMMs sold by HandsonTools have dark-colored bodies and yellow borders, holsters or frames. (See Physical Exhibit G).

192. Fluke has been using its trademark since at least as early as 1988 and continues to use its mark. (Exhibit 1, Cavoretto Decl. ¶ 13-22).

193. [

194. [

195. The Respondents have placed their infringing meters on the same pages of their catalogues and websites as the Fluke meters. (Exhibits 3 and 11).

196. Respondent Mastech's products, sold by HandsOnTools, states on its website profile page that it applies "the latest testing equipment from WAVETEK, FLUKE & TEKTRONIX and flexible manufacturing techniques . . ." (Exhibit 9).

197. The defaulting Respondents' DMMs and Fluke's DMMs are marketed to perform the same basic functionality. (*Compare* Exhibits 25; 54-56 with Exhibit 1, Cavoretto Decl. at Exhibit 18).

198. Fluke's DMMs bearing the Fluke Mark and defaulting Respondents' look-alike DMMs are in competition and sold through the same channels and to the same customers. (Exhibit 1, Cavoretto Decl. ¶ 36; Exhibits 3 and 11).

199. Consumers of DMMs and products with multimeter functionality are likely to vary in the level of sophistication. (Exhibit 1, Cavoretto Decl. ¶ 31, 35).

200. There are varying levels of degree of care by purchasers of DMMs and products with multimeter functionality (*Id.* ¶ 35)

B. Survey Evidence is Strong Evidence of Likelihood of Confusion

201. Dr. Peterson concluded that based on the survey evidence regarding the Chauvin Arnoux DMM, which had a dark-colored body and a yellow border, forty-three percent of the consumers were likely to assume that the Chauvin Arnoux DMM was associated with Fluke. (Exhibit 8, Peterson Decl. ¶ 22).

202. It is Dr. Peterson's opinion that the likelihood of confusion percentages would be higher if he were to conduct his likelihood of confusion survey again in the instant investigation because of the similarity of the Respondents' products to the Fluke Mark. (Exhibit 8, Peterson Decl. ¶ 25, 27, 28).

203. The Mastech MY-67 was used as a control in the EMC Report survey and produced confusion levels of thirty-four percent and forty-two percent for the in-person and telephone surveys, respectively. (Exhibit 8, Peterson Decl. ¶ 29 and Exhibit 6 at 21, 26 thereto).

VI. FLUKE SATISFIES THE DOMESTIC INDUSTRY REQUIREMENT

204. The asserted Trademark is featured in Fluke's advertising materials for DMMs, including the model 87 DMM. (Exhibit 1, Cavoretto Decl at Exhibits 15-18).

205. Significant investments are made in advertising the trademark on Fluke DMMs. (Exhibit, Cavoretto Decl. ¶ 29).

206. When Fluke products bearing the Trademark, including the model 87 DMM are sold, they are transferred to the customer bearing the asserted trademark. (Exhibit 57, Thikoll Decl. ¶ 10).

207. Fluke products bearing the Trademark, including the model 87 DMM, are manufactured in, among other places, Fluke's Evergreen Way Facility in Everett, Washington. (Exhibit 57, Thikoll Decl. ¶ 3).

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VII. FLUKE DOMESTIC INDUSTRY HAS BEEN AND WILL BE INJURED

221. The defaulting Respondents' and Fluke's DMMs and/or products with multimeter functionality having the Trade Dress are available in some of the same catalogs, such as the Jameco catalog, and on the same websites, such as defaulting Respondents' Electronix Express website and Amazon. (Exhibits 3, 5, 11 and 54).

222. The defaulting Respondents' DMMs and products with multimeter functionality have been found in the same distribution channels as Fluke. (Id.)

223. Defaulting Respondents' products are sold alongside Fluke products in these catalogs and on these websites. (Id.)

224. The accused products are found in the same sections of these websites and catalogs where they can be sold to the same market segment that purchases DMMs and products with multimeter functionality. (Id.)

225. []

226. The Sinometer VC890 sells for \$29.95 (Exhibit 21).

227. Electronix Express sells a MY 64 for \$32.95 (Exhibit 15).

228. A Hongda DMMs sells for \$124.99 (Exhibit 22).

229. HandsOnTools sells its DMMs for \$41.15 and \$15.98 (Exhibit 14).

230. Respondents' prices are lower than any DMM or product with multimeter functionality that Fluke sells. See Price Comparison below.

PRICE COMPARISON CHART

Fluke Products ¹ - DMMs	List Price	Respondent Products ² - DMMs	Price
Fluke 110	[]	Victor VC9801A-3 ½ Digital Multimeter, with back light	\$34.99
Fluke 111	[]	Circuit Specialists True RMS DMM (CSI980 DMM)	\$55.00
Fluke 112	[]	ESI480A ESI Auto-Ranging Multimeter	\$41.15
Fluke 16	[]	ESI501 Electronic Specialties Digital Mini Multimeter w/Holster	\$15.98
Fluke 175	[]	RSR 01DMMY64 Digital Multimeter #MY64	\$32.95
Fluke 177	[]	Elenco M-2625 Digital Multimeter	\$39.95
Fluke 179	[]	CEN TECH Multi-meter Digital AC/DC	\$24.99
Fluke 187	[]	Mastech 2000-Count Multimeter w/ Temp & Freq Measurements	\$38.79
Fluke 189	[]	Hongda 4-1/2 Digit DMM w/ Pop up, backlit display	\$124.99
Fluke 27	[]	Sinometer VC890C General Purpose DMM	\$39.95

1 []

² Respondent pricing as of time of purchase.

		for Heavy Duty Design. Temperature	
Fluke 27B		TekPower TP4000ZC	\$39.95
Fluke 73-3		Velleman DVM850BL Digital Multimeter	\$18.88
Fluke 77-3		Tech TM-108 Digital Multimeter with Thermocouple	\$21.95
Fluke 78 -		Sinometer VC890C	\$29.95
Fluke 83-5		Mastech Multimeter MY67	\$35.95
Fluke 87-5		Velleman DVM850BL Digital Multimeter	\$14.95
Fluke 87-5E			
Fluke 88 - 5			
Fluke 88-5E			
Fluke 1577			
Fluke 1578			
Fluke 705 - Loop Calibrator			
Fluke 707 - Loop Calibrator			
Fluke 707 E - MA Calibrator			
Fluke 712 - RTD Calibrator			
Fluke 714 - Thermocouple Calibrator			
Fluke 715 - Volt/Ma Calibrator			
Fluke 724 - Temperature Calibrator		Victor VC14-5 1/2 Temperature Calibrator	\$499.00
Fluke 787 - Processmeter			
Fluke 789 - Processmeter			

231. [

232. Fluke is recognized as the market leader in DMM sales and product quality and is well known by consumers. (Exhibit 6, ¶ 5).

233. Fluke's name is widely known, and consumers associate the Fluke name with quality, reliability, and ruggedness. (Exhibit 8, Peterson Decl. at Exhibit 6 at 1).

234. Fluke is respected as having the best DMM products on the market. *Id.*

VIII. REMEDY

235. These accused products are widely available for sale throughout the country, as reflected in Respondents' sales catalogs, brochures and websites. (Exhibits 3, 25, 54-56, 59-71).

236. Respondents Circuit Specialists, Digitek, Electronic Specialties, Jameco, Parts Express and Vellman all recognized the validity of the Fluke Mark and agreed not to import products using the Fluke Mark. (Order Nos. 12, 13, 14, 17 and 18).

237. There are numerous foreign suppliers that specialize in manufacturing these Fluke look-alike products and appear to act as original equipment manufacturers for United States distributors. (Exhibit 10).

238. [

239. [

240. It is difficult to identify the source of many of these infringing DMMs due to private label agreements between distributors and manufacturers. (Exhibit 1, Cavoretto Decl. ¶ 33).

241. [

242. [

243. Manufacturers of infringing products exist beyond those manufacturers named in the Complaint. (Exhibits 76-96).

244. There are infringing DMMs and products with multimeter functionality sold and offered for sale in the U.S. where Fluke was unable to identify the foreign manufacturer. (Exhibit 72).

245. Both foreign and domestic entities alike take full advantage of the ease of internet commerce by selling DMMs and products with multimeter functionality on their websites. (Exhibits 5, 11, 25, 47, 54, 55, 56, and 59-70).

246. All retailers named in this investigation have an online store, and all the manufacturers named in this investigation have their products displayed online on at least one of these retailers' websites. (Exhibits 5, 11, 25, 47, 54, 55, 56, and 59-70).

247. Catalogs and brochures are prevalent in the test instrument industry. (Exhibits 3, 76-96; Exhibit 1, Cavoretto Decl. at Exhibits 12-18).

248. In addition to displaying their imported products on U.S. retailer websites, foreign manufacturers' products also appear in mass-mailed catalogs and brochures. (Exhibits 2-5, 71, 76-96 and 99-100).

249. Tradeshows are a popular venue for foreign manufacturers to advertise their products to U.S. retailers. (Exhibit 1, Cavoretto Decl. ¶ 30).

250. Many U.S. retailers and distributors attend various tradeshows both in the U.S. and abroad. (*Id.*).

251. [

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254. [

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255. Respondents agreed in the settlement agreements and consent order stipulations to disperse these inventories within 90 -120 days. (Consent Order Stipulations ¶ 15: Elenco, Altadox, Kaito, TechBuys and Velleman; Consent Order Stipulations ¶ 16: Mastech, Everbest and Victor Hi-Tech; Settlement Agreements ¶ 8: Digitek and Electronic Specialties; Settlement Agreements ¶ 10: Circuit Specialists, Jameco and Velleman).

256. For a manufacturer to change the color of the boot or holster on their test instruments is an easy change. (Exhibit 1, Cavoretto Decl. ¶ 34).

257. All a manufacturer has to do to make this change is use a different color resin for the holster or boot. (Exhibit 1, Cavoretto Decl. ¶ 34).

258. This change can be made at no cost because resin color costs the same whether is it blue, gray, red or yellow. (Exhibit 1, Cavoretto Decl. ¶ 34).

259. This change can also be done very quickly, it would only take a couple of days. (Exhibit 1, Cavoretto Decl. ¶ 34; Exhibits 3 and 4).

260. [

261. This color change can be made quickly. (Exhibit 1, Cavoretto Decl. ¶ 34; Exhibits 3 and 4).

262. In a matter of months (February 2007 to May 2007) manufacturers and labels such as Mastech, Velleman, and Jameco/BenchPro were able to change the color of their holsters, and retailers such as Jameco were able to advertise this change in their catalog. (Exhibits 3 and 4).

Dated: July 3, 2007

Respectfully submitted,



~~Peter E. Moll~~

~~Cecilia H. Gonzalez~~

~~John J. Rosenthal~~

~~Bert C. Reiser~~

~~Margaret D. Macdonald~~

~~Nikole R. Salata~~

HOWREY, LLP

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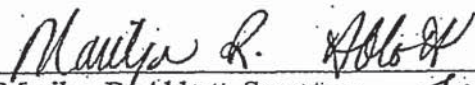
Counsel for Complainant
Fluke Corporation

IN THE MATTER OF CERTAIN DIGITAL
MULTIMETERS, AND PRODUCTS WITH
MULTIMETER FUNCTIONALITY

337-TA-588

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **CONFIDENTIAL ORDER** was served upon, **Juan S. Cockburn, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on January 14, 2008.


Marilyn R. Abbott, Secretary *JMG*
U.S. International Trade Commission
500 E Street, S.W., Room 112A
Washington, DC 20436

FOR COMPLAINANT FLUKE CORPORATION:

Cecilia H. Gonzalez, Esq.
Peter E. Moll, Esq.
John J. Rosenthal, Esq.
Bert C. Reiser, Esq.
Margaret D. Macdonald, Esq.

HOWREY LLP

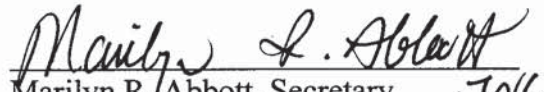
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004

**IN THE MATTER OF CERTAIN DIGITAL
MULTIMETERS, AND PRODUCTS WITH
MULTIMETER FUNCTIONALITY**

337-TA-588

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** was served upon, **Juan S. Cockburn, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on February 4, 2008.


Marilyn R. Abbott, Secretary *JN6*
U.S. International Trade Commission
500 E Street, S.W., Room 112A
Washington, DC 20436

FOR COMPLAINANT FLUKE CORPORATION:

Cecilia H. Gonzalez, Esq.
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ELECTRONIX EXPRESS
A DIVISION OF R.S.R. ELECTRONICS, INC.
365 Blair Road.
Avenel, NJ 07001

HANDSONTOOLS
1001 - A E Harmony Road
Suite 332
Fort Collins, CO 80525

**IN THE MATTER OF CERTAIN DIGITAL
MULTIMETERS, AND PRODUCTS WITH
MULTIMETER FUNCTIONALITY**

337-TA-588

**FOR RESPONDENT PRECISION MASTECH ENTERPRISE COMPANY; SHENZHEN
EVERBEST MACHINERY INDUSTRY COMPANY LTD. & SHENZHEN VICTOR HI-
TECH CO, LTD:**

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Mark G. Davis, Esq.

Sean Trainor, Esq.

McDERMOTT WILL & EMORY, LLP

600 Thirteenth Street, NW

Washington, DC 20005-3096

SHENZHEN HONGDA ELECTRONIC COMPANY LTD.

East. 6/F. 14 Bagua-4 Road,

Futian District, Shenzhen

CHINA

SINOMETER INSTRUMENTS CO., LTD.

Ginza International Building, 1056

Shennan Avenue

Shenzhen, CHINA

PUBLIC MAILING LIST

Sherry Robinson

LEXIS - NEXIS

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Ronnita Green

Thomson West

1100 – 13th Street NW

Suite 200

Washington, DC 20005

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

In the Matter of

CERTAIN DIGITAL MULTIMETERS,
AND PRODUCTS WITH MULTIMETER
FUNCTIONALITY

Investigation No. 337-TA-588

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION FINDING ONE RESPONDENT IN DEFAULT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation finding a respondent in default.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.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: This investigation was instituted on November 13, 2006, based on a complaint filed by Fluke Corporation (“Fluke”) of Everett, Washington. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital multimeters and products with multimeter functionality by reason of infringement of United States Trademark Registration No. 2,796,480 and also by infringement of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complaint further alleges that an industry exists in the United States with respect to the asserted intellectual property rights. The complainant requests that the Commission issue a permanent general exclusion order and permanent cease and desist orders. The complaint named Altadox, Inc. of Arcadia, California;

Circuit Specialists, Inc. of Mesa, Arizona; Digitek Instruments Co., Ltd. of Hong Kong; Electronic Specialties, Inc. of Spring Grove, Illinois; Electronix Express of Avenel, New Jersey; Elenco Electronics, Inc. of Wheeling, Illinois; HandsOnTools of Fort Collins, Colorado; Harbor Freight Tools of Camarillo, California; Jameco Electronics of Belmont, California; Kaito Electronics, Inc. of Montclair, California; Parts Express of Springboro, Ohio; Precision Mastech Enterprises Co. of Hong Kong; Shenzhen Everbest Machinery Industry Co., Ltd. of China; ShenZhen Hongda Electronic Co., Ltd. of China; Shenzhen Victor Hi-Tech Co., Ltd. of China; Sinometer Instruments Co., Ltd. of China; TechBuys, LLC of LaVerne, California; and Velleman Inc. of Fort Worth, Texas as respondents in this investigation.

On March 26, 2007, the complainant filed a motion pursuant Commission rule 210.16, 19 C.F.R. § 210.16, for an order to show cause and entry of a default judgment against respondent Electronix Express (“Electronix”). The ALJ issued a show cause order (Order No. 10) on April 30, 2007. Electronix did not respond to Order No. 10.

The ALJ issued the subject ID (Order No. 15) on May 17, 2007, finding Electronix in default. No petitions for review of the ID were filed. The Commission has determined not to review the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and Commission rules 210.16, 210.42, 19 C.F.R. §§ 210.16, 210.42.

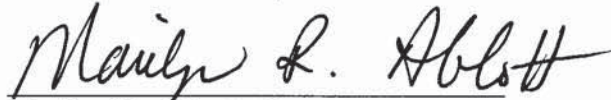
By order of the Commission.


Marilyn R. Abbott
Secretary to the Commission

Issued: June 14, 2007

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL DETERMINATION FINDING ONE RESPONDENT IN DEFAULT** has been served by hand upon the Commission Investigative Attorney, Erin D.E. Joffre, Esq., and the following parties as indicated, on June 14, 2007.



Marilyn R. Abbott, Secretary
U.S. International Trade Commission
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ON BEHALF OF COMPLAINANT FLUKE CORPORATION:

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**ON BEHALF OF RESPONDENTS PRECISION
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EVERBEST MACHINERY INDUSTRY CO., LTD.,
AND SHENZHEN VICTOR HI-TECH CO., LTD.:**

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**ON BEHALF OF RESPONDENTS DIGITEK
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**ON BEHALF OF RESPONDENT PARTS EXPRESS
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Dayton, OH 45402-1290
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F-937-224-4311

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

RESPONDENTS:

Circuit Specialist, Incorporated
220 S Country Club Drive #2
Mesa, AZ 85210

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

Electronix Express
A Division of R.S.R. Electronics, Inc.
365 Blair Road
Avenel, NJ 07001

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

Elenco Electronics, Inc.
150 W. Carpenter Avenue
Wheeling, IL 60090

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

Jameco Electronics
1355 Shoreway Road
Belmont, CA 94002

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN DIGITAL MULTIMETERS, AND
PRODUCTS WITH MULTIMETER
FUNCTIONALITY**

Inv. No. 337-TA-588

**ORDER NO. 15: INITIAL DETERMINATION FINDING RESPONDENT
ELECTRONIX EXPRESS IN DEFAULT**

(May 17, 2007)

On March 26, 2007, Complainant Fluke Corporation (“Fluke”) filed a motion (588-010), pursuant to 19 U.S.C. § 1337(g)(1) and Commission Rule 210.16, for an order to show cause and default judgement against Respondent Electronix Express, a division of R.S.R. Electronics, Inc. (“Electronix”). Fluke’s motion requests the issuance of an initial determination finding Electronix in default upon Electronix’ failure to show cause. The motion also requests, upon finding Electronix in default, immediate entry of a limited exclusion order, cease and desist order, and/or other appropriate relief. Order No. 10, issued on April 30, 2007, ordered Electronix to show, by the close of business on May 11, 2007, why it should not be found in default for failure to respond to the Complaint and Notice of Investigation pursuant to Rule 210.16 of the Commission’s Rules of Practice and Procedure, 19 C.F.R. § 210.16. No response to Order No. 10 was filed by the deadline.

Commission Rule 210.16 provides in pertinent part, as follows:

A party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed in §210.13 or § 210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.¹

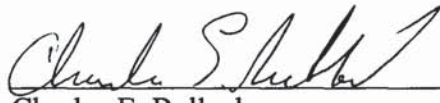
¹ 19 C.F.R. § 210.16(a)(1).

The Commission's Rules further provide that "[a] party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation."²

Accordingly, it is the INITIAL DETERMINATION of the Administrative Law Judge that Respondent Electronix Express, a division of R.S.R. Electronics, Inc. be found to be in default. Consequently, Respondent Electronix has waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.

Pursuant to 19 C.F.R. § 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the initial determination or certain issues contained herein.

SO ORDERED.



Charles E. Bullock
Administrative Law Judge


² 19 C.F.R. § 210.16(b)(3).

**IN THE MATTER OF CERTAIN DIGITAL
MULTIMETERS, AND PRODUCTS WITH
MULTIMETER FUNCTIONALITY**

337-TA-588

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** was served upon, **Juan S. Cockburn, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on May 17, 2007.


Marilyn R. Abbott, Secretary
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**IN THE MATTER OF CERTAIN DIGITAL
MULTIMETERS, AND PRODUCTS WITH
MULTIMETER FUNCTIONALITY**

337-TA-588

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**IN THE MATTER OF CERTAIN DIGITAL
MULTIMETERS, AND PRODUCTS WITH
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337-TA-588

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**IN THE MATTER OF CERTAIN DIGITAL
MULTIMETERS, AND PRODUCTS WITH
MULTIMETER FUNCTIONALITY**

337-TA-588

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

In the Matter of

**CERTAIN DIGITAL MULTIMETERS,
AND PRODUCTS WITH MULTIMETER
FUNCTIONALITY**

Investigation No. 337-TA-588

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION FINDING THREE RESPONDENTS IN DEFAULT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation finding three respondents in default, and to have waived their respective rights to appear, to be served with documents, and to contest the allegations at issue in the investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.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: This investigation was instituted on November 13, 2006, based on a complaint filed by Fluke Corporation of Everett, Washington. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and/or the sale within the United States after importation of certain articles by reason of infringement of United States Trademark Registration No. 2,796,480 and trade dress used with and embodied in articles manufactured by the complainant. The complainant requests that the ITC issue a permanent general exclusion order and a permanent cease and desist order barring future importation and sale of the accused products. The complaint further alleges that an industry exists as required by subsection (a)(2) of

section 337. The complaint named Altadox, Inc. of Arcadia, California; Circuit Specialists, Inc. of Mesa, Arizona; Digitek Instruments Co., Ltd. of Hong Kong; Electronic Specialties, Inc. of Spring Grove, Illinois; Electronix Express of Avenel, New Jersey; Elenco Electronics, Inc. of Wheeling, Illinois; HandsOnTools of Fort Collins, Colorado; Harbor Freight Tools of Camarillo, California; Jameco Electronics of Belmont, California; Kaito Electronics, Inc. of Montclair, California; Parts Express of Springboro, Ohio; Precision Mastech Enterprises Co. of Hong Kong; Shenzhen Everbest Machinery Industry Co., Ltd. of China; Shenzhen Hongda Electronic Co., Ltd. of China; Shenzhen Victor Hi-Tech Co., Ltd. of China; Sinometer Instruments Co., Ltd. of China; TechBuys, LLC of LaVerne, California; and Velleman Inc. of Fort Worth, Texas as respondents in this investigation.

On January 5, 2007, the complainant filed a motion pursuant Commission rule 210.16, 19 C.F.R. § 210.16, for an order to show cause and entry of a default judgment against three respondents: HandsOnTools, Shenzhen Hongda Electronic Co., Ltd., and Sinometer Instruments Co. Ltd. The Commission investigative attorney supported the motion. None of the respondents filed a response to the motion. The ALJ issued a show cause order (Order No. 6) on February 13, 2007. The order required the three respondents to show cause why they should not be held in default, having not responded to the complaint and notice of investigation or the motion for a show cause order. None of the three respondents responded to Order No. 6.

The ALJ issued the subject ID (Order No. 8) on March 1, 2007. The ALJ states in the ID that the three respondents did not respond to the complaint, notice of investigation, or the order to show cause. Consequently, the ALJ found the three respondents in default, and pursuant to Commission Rule 210.16(b)(3), 19 C.F.R. § 210.16(b)(3), to have waived their right to appear, be served with documents, or contest the allegations in the complaint. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and Commission rule 210.42, 19 C.F.R. § 210.42.

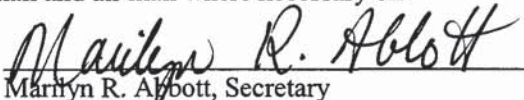
By order of the Commission.


Marilyn R. Abbott
Secretary to the Commission

Issued: March 28, 2007

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL DETERMINATION FINDING THREE RESPONDENTS IN DEFAULT** has been served on upon the Commission Investigative Attorney, Anne Goalwin, Esq., and all parties via first class mail and air mail where necessary on March 29, 2007.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
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CO., SHENZHEN EVERBEST
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AND SHENZHEN VICTOR HI-TECH CO.,
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Page 2 – Certificate of Service

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN DIGITAL MULTIMETERS, AND
PRODUCTS WITH MULTIMETER
FUNCTIONALITY**

Inv. No. 337-TA-588

**ORDER NO. 8: INITIAL DETERMINATION FINDING RESPONDENTS
HANDSONTOOLS, HONGDA, AND SINOMETER IN DEFAULT**

(March 1, 2007)

On January 5, 2007, Complainant Fluke Corporation (“Fluke”) filed a motion (588-008), pursuant to 19 U.S.C. § 1337(g)(1) and Commission Rule 210.16, for issuance of orders directing Respondents HandsOnTools, Shenzhen Hongda Electronic Co., Ltd. (“Hongda”), and Sinometer Instruments Co. Ltd. (“Sinometer”) to show cause why they should not be found in default for failure to respond to the complaint and notice of investigation. The motion also requested, upon finding HandsOnTools, Hongda, and Sinometer in default, immediate entry of a limited exclusion order, cease and desist order, and/or other appropriate relief. Order No. 6, issued on February 13, 2007, ordered the above named respondents to show, by the close of business on February 26, 2007, why they should not be found in default for failure to respond to the Complaint and Notice of Investigation pursuant to Rule 210.16 of the Commission’s Rules of Practice and Procedure, 19 C.F.R. § 210.16. No responses to Order No. 6 were filed by the deadline date, and no responses have been filed as of the present date.

Commission Rule 210.16 provides in pertinent part, as follows:

A party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed in §210.13 or § 210.59(c), or otherwise fails

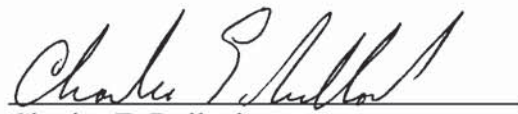
to answer the complaint and notice, and fails to show cause why it should not be found in default.¹

The Commission's Rules further provide that “[a] party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.”²

Accordingly, it is the INITIAL DETERMINATION of the Administrative Law Judge that Respondents HandsOnTools, Hongda, and Sinometer be found to be in default. Consequently, Respondents HandsOnTools, Hongda, and Sinometer have waived their right to appear, to be served with documents, and to contest the allegations at issue in the investigation.

Pursuant to 19 C.F.R. § 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the initial determination or certain issues contained herein.

SO ORDERED.


Charles E. Bullock
Administrative Law Judge

¹ 19 C.F.R. § 210.16(a)(1).


² 19 C.F.R. § 210.16(b)(3).

**IN THE MATTER OF CERTAIN DIGITAL
MULTIMETERS, AND PRODUCTS WITH
MULTIMETER FUNCTIONALITY**

337-TA-588

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** was served upon, **Erin D.E. Joffre, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on March 1, **2007**.


Marilyn R. Abbott, Secretary
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RESPONDENTS:

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✓ **CIRCUIT SPECIALISTS, INC.**
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**IN THE MATTER OF CERTAIN DIGITAL
MULTIMETERS, AND PRODUCTS WITH
MULTIMETER FUNCTIONALITY**

337-TA-588

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**IN THE MATTER OF CERTAIN DIGITAL
MULTIMETERS, AND PRODUCTS WITH
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337-TA-588

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**IN THE MATTER OF CERTAIN DIGITAL
MULTIMETERS, AND PRODUCTS WITH
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337-TA-588

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