

In the Matter of

CERTAIN CIGARETTE HOLDERS

Investigation No. 337-TA-51



USITC PUBLICATION 959

MARCH 1979

UNITED STATES INTERNATIONAL TRADE COMMISSION

COMMISSIONERS

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Bill Alberger, Vice Chairman
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Kenneth R. Mason, Secretary to the Commission

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

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

In the Matter of)
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CERTAIN CIGARETTE HOLDERS)
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Investigation No. 337-TA-51

COMMISSION DETERMINATION, ORDER, AND OPINIONS

Introduction

The U.S. International Trade Commission, pursuant to the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), conducted an investigation with respect to certain cigarette holders allegedly covered by the claim of U.S. Letters Patent Des. 242,931, owned by the complainant in this proceeding, John Herman. The Commission investigated alleged unfair methods of competition and unfair acts in the importation of these cigarette holders into the United States, or in their sale by the owner, importer, consignee, or agent of either, the alleged effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

This Commission determination and order provide for the final disposition of investigation No. 337-TA-51 by the Commission. Such determination and order are based upon the Commission's decision, made in public session at the Commission meeting of March 15, 1979, that there is no violation of section 337.

The text of the Commission's determination and order appears immediately below and is followed by the Commissioners' opinions.

Determination

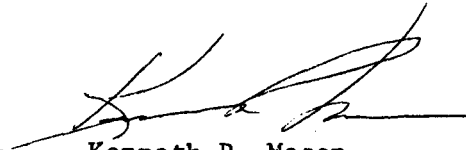
Having reviewed the record in this investigation, including the recommended determination of the presiding officer, the Commission on March 15, 1979, determined that, with respect to investigation No. 337-TA-51, there is no violation of section 337 of the Tariff Act of 1930, as amended, for the reason that the effect or tendency of the importation of the allegedly infringing articles is not to destroy or substantially injure the domestic industry.

Order

Accordingly, it is hereby ordered--

1. That investigation No. 337-TA-51 is terminated effective upon the issuance of this Commission Determination, Order, and Opinions;
2. That this order shall be served upon each party of record in this investigation and upon the U.S. Department of Health, Education, and Welfare, the U.S. Department of Justice, and the Federal Trade Commission.

By order of the Commission.



Kenneth R. Mason
Secretary

Issued: March 29, 1979

Opinion of Chairman Parker
and Commissioners Moore, Bedell

Procedural history

The present investigation was instituted by the U.S. International Trade Commission on March 23, 1978, on the basis of an amended complaint filed pursuant to section 337 of the Tariff Act of 1930, as amended, 1/ by Mr. John Herman, then doing business as Spoon Ring Co. 2/ Notice of the Commission's investigation was published in the Federal Register of March 29, 1978 (43 F.R. 13104). The amended complaint alleged that unfair methods of competition and unfair acts existed in the importation of certain cigarette holders into the United States, or in their sale, by reason of the alleged coverage of such cigarette holders by the claim of U.S. Letters Patent Des. 242,931 (the '931 patent), owned by complainant Herman. It was further alleged that the effect or tendency of such importation or sale was to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The respondents named in the amended complaint and in the Commission's notice of investigation were Bi Rite Enterprises (a Chicago firm) and House of Ripps (a New York City firm).

Upon institution, this matter was referred to an administrative law judge (the presiding officer) who held a hearing on August 23, 1978, at which all interested parties were afforded an opportunity to be heard. Only complainant, his attorney, and the Commission investigative attorney appeared

1/ 19 U.S.C. 1337.

2/ Mr. Herman's business was subsequently incorporated under the name Ormolu Enterprises.

at the hearing; respondents did not participate in the hearing. On October 23, 1978, the presiding officer issued a recommendation that the Commission determine that there is no violation of section 337 for the reason that the effect or tendency of the importation of the cigarette holders in question is not to destroy or substantially injure the domestic industry. Exceptions to the presiding officer's recommended determination were filed by the Commission investigative attorney, but not by complainant or respondents.

On February 21, 1979, the Commission held a hearing on the presiding officer's recommendation, and on the relief, bonding, and public-interest aspects of the investigation. Only the Commission investigative attorney appeared at this hearing, and only the Commission investigative attorney filed the written submissions solicited by the Commission's notice of hearing. 1/

The patented invention

Complainant's '931 patent covers an ornamental design for a cigarette holder in the shape of a key. Because of their shape such articles are often referred to as "key clips." The principal use of the patented article is to hold marijuana cigarettes while they are being smoked.

No violation of section 337

Upon consideration of the presiding officer's recommended determination and the record in this proceeding, we have determined that there is no violation of section 337 of the Tariff Act of 1930, as amended, for the reason that the effect or tendency of the importation of the allegedly infringing articles is not to destroy or substantially injure the domestic industry. 2/

1/ Issued on Nov. 22, 1978, and appearing in the Federal Register of Nov. 28, 1978 (43 F.R. 55472).

2/ In so determining, we adopt the presiding officer's findings of fact Nos. 1-12 and 27-29 and her conclusions of law Nos. 1, 3, and 8.

In this investigation the case for injury to the domestic industry by reason of allegedly infringing imports consists primarily of complainant's testimony to the effect that he had been told by various persons that articles infringing the '931 patent were being imported into the United States in substantial quantities. 1/ Although two imported cigarette holders essentially identical in design to the patented article were introduced in evidence at the hearing before the presiding officer, 2/ the record contains no documentary evidence corroborative of complainant's hearsay testimony. 3/ The record shows domestic production and sales by complainant of 400,000 of the patented cigarette holders within the last 2 years. 4/ Inasmuch as the record reveals no evidence of importation apart from complainant's own testimony and the two cigarette holders placed in evidence at the hearing, the record does not support a finding of effect or tendency to destroy or substantially injure the domestic industry. We have therefore determined that there is no violation of section 337.

1/ Transcript of hearing before presiding officer, pp. 41, 42 and 59. The only other evidence suggesting injury by reason of allegedly infringing imports consists of an affidavit of Sheldon Lentner (complainant's exhibit 1) wherein Lentner states that he has seen cigarette holders substantially identical to those manufactured by complainant "which he was told were imported from South Korea." Lentner has a distributorship agreement with complainant and handles at least 90 percent of complainant's cigarette holder business (presiding officer's finding of fact No. 12).

2/ One cigarette holder (complainant's physical exhibit B) is stamped "Korea," and the other (complainant's physical exhibit C) bears a sticker marked "Made in Hong Kong."

3/ Almost a month after the evidentiary record in this proceeding had been closed, complainant belatedly submitted documentary material showing importation of a quantity of "key clips" from Korea. The presiding officer properly refused to make this material a part of the record.

4/ Presiding officer's finding of fact No. 27; transcript of hearing before presiding officer, pp. 23 and 147.

Concurring Opinion of Vice Chairman Alberger
and Commissioner Stern

For the reasons set forth in the majority opinion, we concur with our colleagues in finding that even if the patent in controversy is valid and infringed, the domestic industry is not being injured by the imported articles. We therefore adopt the findings and conclusions of the presiding officer on this question. However, in patent cases we would also reach the issues of validity and infringement in order to comply with the U.S. Court of Customs and Patent Appeal's (CCPA) admonishment that the Commission reach all appealable issues presented to it in order to avoid remand. 1/ The record as to patent validity 2/ was adequately developed by the parties in this case and was addressed by the presiding officer in her findings and conclusions. We therefore also adopt the findings and conclusions of the presiding officer as to the patent issues. If a majority of the Commission were to reach the patent issues, further evidentiary proceedings could be avoided in the event of a remand. 3/

1/ See *Coleco Industries v. USITC*, 573 F.2d 1247, 1252 note 5 (CCPA, 1978).

Commissioner Alberger would consider the issues of patent validity and infringement before considering the question of injury. He only reaches a determination on injury here to comply with the admonishment of the CCPA in *Coleco*. He notes that the majority does not address the patent issues, perhaps because they feel lack of injury is obvious. But in this case invalidity is just as clear. The effect of deciding the case on the basis of injury alone is to leave the statutory presumption of validity undisturbed. This policy of avoidance has been disapproved by the Supreme Court on public policy grounds in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327 (1945).

2/ The parties to this investigation represented at the hearing before the presiding officer stipulated that (1) the domestic industry is efficiently and economically operated, and (2) one or more imported articles have been sold in the United States during the course of the investigation which would infringe the '931 patent if that patent were valid. (See transcript of prehearing conference, p. 5.) Efficient and economic operation of the domestic industry, importation, and patent infringement are therefore not issues in this investigation.

3/ See Concurring Opinion of Vice Chairman Alberger in *Certain Centrifugal Trash Pumps*, Investigation No. 337-TA-43, U.S.I.T.C. Pub. No. 943 (Feb. 1979).

We find the '931 patent invalid for purposes of section 337 because (1) it is obvious in view of the prior art within the meaning of 35 U.S.C. 103, and (2) it lacks ornamentality within the meaning of 35 U.S.C. 171.

Invalidity based on obviousness

For a patent to be valid, its subject matter must be nonobvious. 35 U.S.C. 103. In determining whether or not the subject matter of the '931 patent is obvious, the appropriate test is that laid down by the Supreme Court in the case of Graham v. John Deere Co. 1/ as modified to apply in cases involving design patents by the U.S. Court of Customs and Patent Appeals in the case of Application of Laverne. 2/ In Deere the Supreme Court stated that under section 103--

the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. 3/

In Laverne the Court of Customs and Patent Appeals concluded that in design patent cases obviousness should be determined by the "ordinary intelligent man." 4/

Complainant's patent covers an ornamental design for a cigarette holder in the shape of a key. To be valid, a design patent must disclose a design that is new, original, ornamental, and nonobvious. 5/ The use to which an article is put is immaterial to its patentability as a design. If the prior

1/ Graham v. John Deere Co., 383 U.S.1 (1966).

2/ Application of Laverne, 356 F.2d 1003. (CCPA, 1966).

3/ 383 U.S. 1, 17 (1966).

4/ 356 F.2d 1003, 1006 (CCPA, 1966).

5/ Schnadig Corp. v. Gaines Mfg. Co., Inc., 494 F.2d 383, 387 (6th Cir., 1974).

art discloses any article of substantially the same appearance, it is not relevant that the prior art article is used for a different purpose. 1/ In the present case, the prior art relied upon consisted of ordinary car and house keys.

As noted, complainant's patent relates to an ornamental design for a cigarette holder in the shape of a key. The principal difference between the patented article and an ordinary car or house key is the somewhat larger hole in the head portion of the former. The presiding officer found the '931 patent invalid because "enlarging the hole in the head would have been an obvious extension of the design of a key head with a small hole." 2/ We agree. In our judgment, the patented design would have been obvious at the time it was created to an ordinary intelligent man in view of the ordinary car and house keys familiar to all.

We find the '931 patent invalid as obvious despite the statutory presumption of validity found in 35 U.S.C. 282. We are aware that the presumption is generally said to be strengthened when, as here, the prior art relied upon to establish invalidity was known to the Patent Office. However, the importance of having prior art considered by the Patent Office is based in large measure upon the expertise of that office in examining complex utility patents for which technical skill is required to fully evaluate the scope and content of the prior art. But this case involves a design patent, and the special expertise of the Patent Office is of no special advantage in determining the similarity of two designs in the eyes of the ordinary

1/ Application of Glavas, 230 F.2d 447, 450 (CCPA, 1956).

2/ Recommended determination, p. 7.

intelligent man. 1/ As the Court of Customs and Patent Appeals noted in Laverne, "no special skill is required to determine what things look like, though individuals react differently." 2/

Invalidity based on lack of ornamentality

There is a second reason why we regard the '931 patent as invalid for purposes of section 337---it lacks ornamentality. Section 171, title 35, of the U.S. Code provides in pertinent part as follows:

Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title. (Emphasis added.)

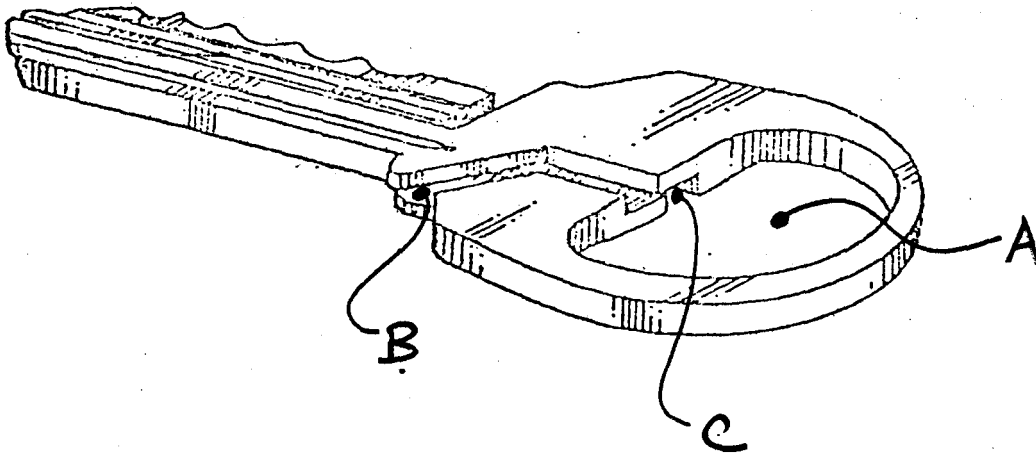
It is well established that, for design patentability purposes, new elements which differentiate a patented design from the prior art must relate to the ornamental appearance of the product and not its functional requirements. 3/ If the differences between the patented design and the prior art are dictated by functional considerations, the patented design is not "ornamental" within the meaning of 35 U.S.C. 171 and is therefore invalid.

In our view, complainant's key clip lacks ornamentality because the differences between it and the prior art are dictated by functional considerations. A drawing of complainant's key clip is shown below.

1/ See Schwinn Bicycle Co. v. Goodyear Tire & Rubber Co., 444 F.2d 295, 300 (9th Cir., 1970).

2/ 356 F.2d 1003, 1006 (CCPA, 1966).

3/ See Application of Garbo, 287 F.2d 192 (CCPA, 1961); Application of Carletti, 328 F.2d 1020 (CCPA, 1964); G.B. Lewis Co. v. Gould Products, Inc. 297 F.Supp. 690 (E.D.N.Y., 1968).



The only differences of any consequence between an ordinary car or house key and complainant's key clip are the enlarged hole in the head of the clip (marked by the letter A in the above drawing) and the slots (marked B and C) on either side of the head. Both the enlarged hole and the slots are required if the patented device is to function as a clip. The presiding officer found that "the loop around the hole acts as a spring to open the stem of the key into a clip." 1/ She also found that "the size of the hole in the head in the key in the '931 patent is a result of the function of the head of the key as a spring to open the key clip" (emphasis added.) 2/ Similarly, the slots referred to above are also required by functional considerations. The slots provide room for opposing sides of the head to move together when the head is squeezed in order to part the clip's jaws. Because the differences between complainant's patent clip and the prior art are dictated by functional considerations, we find the '931 patent invalid as lacking ornamentality.

1/ Finding of fact No. 3.

2/ Recommended determination, p. 7.

Library Cataloging Data

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Washington, 1979.

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1. Smoking paraphernalia. I. Title.
II Title: Certain cigarette holders.

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

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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of:
CERTAIN CIGARETTE HOLDERS

Investigation No. 337-TA-51

NOTICE OF COMMISSION HEARING ON PRESIDING OFFICER'S
RECOMMENDATION, RELIEF, BONDING AND THE PUBLIC INTEREST

Recommendation of "no violation" issued. In connection with the Commission's investigation, under Section 337 of the Tariff Act of 1930, of alleged unfair methods of competition and unfair acts in the importation and sale of certain cigarette holders in the United States, the Presiding Officer recommended on October 23, 1978, that the Commission determine that there is no violation of Section 337. The Presiding Officer certified the hearing record to the Commission for its consideration. Copies of the Presiding Officer's recommendation may be obtained by interested persons by contacting the office of the Secretary to the Commission, 701 E Street, N.W., Washington, D.C. 20436, telephone (202) 523-0161.

Commission hearing scheduled. The Commission will hold a hearing beginning at 10:00 a.m., e.s.t., Wednesday, February 21, 1979, in the Commission's Hearing Room (Room 331), 701 E Street, N.W., Washington, D.C. 20436, for two purposes. First, the Commission will hear oral argument on the Presiding Officer's recommendation that there is no violation of Section 337 of the Tariff Act of 1930. Second, the Commission will receive oral

presentations concerning appropriate relief, bonding, and the public interest in the event that the Commission determines that there is a violation of Section 337. These matters are being heard on the same day in order to facilitate the completion of this investigation within time limits under law and to minimize the burden of this hearing upon the parties to the investigation. The procedure for each portion of the hearing follows.

Oral argument on Presiding Officer's recommendation. A party to the Commission's investigation or an interested agency wishing to present to the Commission an oral argument concerning the Presiding Officer's recommendation will be limited to no more than 30 minutes. A party or interested agency may reserve 10 minutes of its time for rebuttal. The oral arguments will be held in this order: complainant, respondents, interested agencies, and Commission investigative staff. Any rebuttals will be held in this order: respondents, complainants, interested agencies, and Commission investigative staff.

Oral presentations on relief, bonding, and the public interest. Following the oral arguments on the Presiding Officer's recommendation, a party to the investigation, an interested agency, a public interest group, or any interested member of the public may make an oral presentation on relief, bonding, and the public interest.

1. Relief. In the event that the Commission were to find a violation of Section 337, it would issue (1) an order which could result in the exclusion from entry of certain cigarette holders into the United States or (2) an order which could result in requiring respondents to cease and desist from alleged unfair methods of competition or unfair acts in the

importation and sale of these cigarette holders. Accordingly, the Commission is interested in what relief should be ordered, if any.

2. Bonding. In the event that the Commission were to find a violation of Section 337 and order some form of relief, that relief would not become final for a 60-day period during which the President would consider the Commission's report. During this period, the certain cigarette holders would be entitled to enter the United States under a bond determined by the Commission and prescribed by the Secretary of the Treasury. Accordingly, the Commission is interested in what bond should be determined, if any.

3. The public interest. In the event that the Commission were to find a violation of Section 337 and order some form of relief, the Commission must consider the effect of that relief upon the public interest. Accordingly, the Commission is interested in the effect of any exclusion order or cease and desist order upon (1) the public health and welfare, (2) competitive conditions in the United States economy, (3) the production of like or directly competitive articles in the United States, and (4) United States consumers.

A party to the Commission's investigation, an interested agency, a public interest group, or any interested person wishing to make an oral presentation concerning relief, bonding, and the public interest will be limited to no more than 15 minutes. Participants will be permitted an additional 5 minutes each for summation after all presentations have been made. Participants with similar interests may be required to share time. The order of oral presentations will be as follows: complainant, respondents,

interested agencies, public interest groups, other interested members of the public, and Commission investigative staff. Summations will follow the same order.

How to participate in the hearing. If you wish to appear at the Commission's hearing, you must file a written request to appear with the Secretary to the Commission, United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, no later than the close of business (5:15 p.m., e.s.t.) on Wednesday, February 7, 1979. Your written request must indicate whether you wish to present an oral argument concerning the Presiding Officer's recommendation or an oral presentation concerning relief, bonding and the public interest, or both. While only parties to the Commission's investigation, interested agencies, and the Commission investigative staff may present an oral argument concerning the Presiding Officer's recommendation, public interest groups and other interested members of the public are encouraged to make an oral presentation concerning the public interest.

Written submissions to the Commission. The Commission requests that written submissions of two types be filed prior to the hearing in order to focus the issues and facilitate the orderly conduct of the hearing.

1. Briefs on the Presiding Officer's recommendation. Parties to the Commission's investigation, interested agencies, and the Commission investigative staff are encouraged to file briefs concerning exceptions to the Presiding Officer's recommendation. Prehearing briefs must be filed with the Secretary to the Commission by no later than the close of business on Wednesday, February 7, 1979. Briefs must be served on all parties of record

to the Commission's investigation on or before the date they are filed with the Secretary. Statements made in briefs should be supported by references to the record. Persons with the same positions are encouraged to consolidate their briefing, if possible.

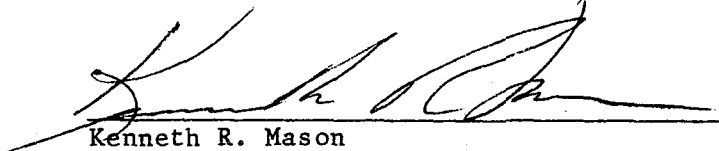
2. Written comments and information concerning relief, bonding, and the public interest. Parties to the Commission's investigation, interested agencies, public interest groups, and any other interested members of the public are encouraged to file written comments and information concerning relief, bonding, and the public interest. These written submissions will be very useful to the Commission in the event it determines that there is a violation of Section 337 and that relief should be granted.

Written comments and information concerning relief, bonding, and the public interest shall be submitted in this order. First, complainant shall file a detailed proposed Commission action, including a proposed determination of bonding, a proposed remedy, and a discussion of the effect of its proposals on 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, with the Secretary to the Commission by no later than the close of business on Wednesday, January 31, 1979. Second, other parties, interested agencies, public interest groups, and other interested members of the public shall file written comments and information concerning the action which complainant has proposed, any available alternatives, and the advisability of any Commission action in light of the public interest considerations listed above by no later than the close of business on Wednesday, February 14, 1979.

Additional information. The original and nineteen true copies of all written submissions must be filed with the Secretary to the Commission. If you wish to submit a document (or a portion thereof) to the Commission in confidence, you must request in camera treatment. Your request should be directed to the Chairman of the Commission and must include a full statement of the reasons for granting in camera treatment. The Commission will either accept such submission in confidence, or it will return the submission to you. All nonconfidential written submissions will be open to public inspection at the Secretary's Office.

Notice of the Commission's investigation was published in the Federal Register of March 29, 1978 (43 F.R. 13104).

By order of the Commission:



Kenneth R. Mason
Secretary

Issued: November 22, 1978

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)	
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CERTAIN CIGARETTE HOLDERS)	Investigation No. 337-TA- 51
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NOTICE OF INVESTIGATION

Notice is hereby given that a complaint was filed with the United States International Trade Commission on February 21, 1978, and amended March 8, 21 and 22, 1978, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Spoon Ring Company, 3060 Belden Drive, Los Angeles, California 90068, alleging that unfair methods of competition and unfair acts exist in the importation of certain cigarette holders into the United States, or in their sale, by reason of the alleged coverage of such cigarette holders by the claim of U.S. Letters Patent Des. 242,931. The amended complaint alleges that such unfair methods of competition and unfair acts have the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Complainant requests permanent exclusion from entry into the United States of the articles in question. Complainant also requests exclusion from entry into the United States, except under bond, of the articles in question during the investigation of this matter.

Having considered the amended complaint, the United States International Trade Commission on March 23, 1978, ORDERED:

1. That, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine under subsection (c) whether, on the basis of the allegations set forth in the amended complaint and the evidence adduced, there is a violation or reason to believe that there is a violation of subsection (a) of this section in the unauthorized importation of certain cigarette holders into the United States, or in their sale, by reason of the alleged coverage of such cigarette holders by the claim of U.S. Letters Patent Des. 242,931, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

2. That, for the purpose of the investigation so instituted, the following persons alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, are hereby named as respondents upon which the amended complaint and this notice are to be served:

Bi Rite Enterprises
3014 South Archer Avenue
Chicago, Illinois 60608

House of Ripps
252-D Lake Avenue
Yonkers, New York 10701

3. That, for the purpose of the investigation so instituted, Judge Donald K. Duvall, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, is hereby appointed as presiding officer.

4. That, for the purpose of the investigation so instituted, Steven Morrison, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, is hereby named Commission investigative attorney.

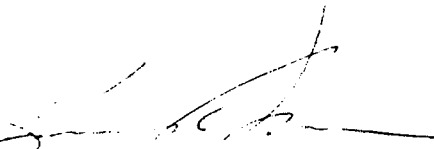
Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure,

as amended (19 C.F.R. 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the amended complaint and this notice. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and of this notice, and will authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter both a recommended determination and a final determination, respectively, containing such findings.

The amended complaint, with the exception of any confidential information contained therein, is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, and in the New York City office of the Commission, 6 World Trade Center.

By order of the Commission.



KENNETH R. MASON
Secretary

Issued: March 24, 1978

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

In the Matter of
CERTAIN CIGARETTE HOLDERS


Investigation No. 337-TA-51

NOTICE OF COMMISSION DETERMINATION

Upon consideration of the presiding officer's recommended determination and the record in this proceeding, the U.S. International Trade Commission has determined that no violation of section 337 of the Tariff Act of 1930, as amended, exists. Any party wishing to petition for reconsideration must do so within fourteen (14) days of service of the Commission determination. Such petitions must be in accord with section 210.56 of the Commission's rules (19 CFR 210.56). Any person adversely affected by a final Commission determination may appeal such determination to the U.S. Court of Customs and Patent Appeals.

Copies of the Commission determination, order, and opinions (USITC Publication 959, March 1979) are available to the public during official working hours at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone (202) 523-0161. Notice of the institution of the Commission's investigation was published in the Federal Register of March 29, 1978 (43 F.R. 13104).

By order of the Commission.


Kenneth R. Mason
Secretary

Issued: March 29, 1979

1. That, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine under subsection (c) whether, on the basis of the allegations set forth in the amended complaint and the evidence adduced, there is a violation or reason to believe that there is a violation of subsection (a) of this section in the unauthorized importation of certain cigarette holders into the United States, or in their sale, by reason of the alleged coverage of such cigarette holders by the claim of U.S. Letters Patent Des. 242,931, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

2. That, for the purpose of the investigation so instituted, the following persons alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, are hereby named as respondents upon which the amended complaint and this notice are to be served:

Bi Rite Enterprises	House of Ripps
3014 South Archer Avenue	252-D Lake Avenue
Chicago, Illinois 60608	Yonkers, New York 10701

3. That, for the purpose of the investigation so instituted, Judge Donald K. Duvall, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, is hereby appointed as presiding officer.

4. That, for the purpose of the investigation so instituted, Steven Morrison, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, is hereby named Commission investigative attorney.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure,

as amended (19 C.F.R. 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the amended complaint and this notice. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and of this notice, and will authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter both a recommended determination and a final determination, respectively, containing such findings.

The amended complaint, with the exception of any confidential information contained therein, is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, and in the New York City office of the Commission, 6 World Trade Center.

By order of the Commission.



KENNETH R. MASON
Secretary

Issued: March 24, 1978

