INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–424]

Certain Cigarettes and Packaging Thereof; Notice of Issuance of General Exclusion Order and Cease and Desist Order

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 a cease and desist order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone (202) 205–3090, e-mail *saranoff@usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 16, 1999, based on a complaint and supplement to the complaint filed by Brown & Williamson Tobacco Corporation (''complainant'' or ''Brown & Williamson''). Complainant alleged unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation, sale for importation, and/or sale within the United States after importation of certain cigarettes and packaging thereof, by reason of: (a) Infringement of 11 federally registered U.S. trademarks (U.S. Reg. Nos. 118,372; 311,961; 335,113; 366,744; 404,302; 508,538; 747,482; 747,490; 2,055,297; 2,174,493; and 2,218,589) (''the Brown & Williamson trademarks''); (b) trademark dilution; (c) false representation of source; and (d) false advertising. The Commission's notice of investigation named Allstate Cigarette Distributors, Inc. (''Allstate''), Dood Enterprises, Inc. (''Dood''), Prestige Storage and Distribution, Inc. (''Prestige''), and R.E. Tobacco Sales, Inc. (''R.E. Tobacco'') as respondents.

On December 15, 1999, the Commission determined not to review an initial determination (''ID'') (Order No. 15) granting the motion of PTI, Inc., doing business as Ampac Trading (''PTI'' or ''intervenor''), to intervene in this investigation. On February 22, 2000, the Commission determined to review and affirm an ID (Order No. 30) granting the motion of respondent Allstate to terminate the investigation as to it based on a consent order. On March 24, 2000, the Commission determined not to review two IDs (Orders Nos. 60 and 61) granting the motions of respondents Prestige and R.E. Tobacco to terminate the investigation as to them based on consent orders. On April 27, 2000, the Commission determined not to review an ID (Order No. 68) granting the motion of respondent Dood to terminate the investigation as to it based on a consent order.

On March 24, 2000, the Commission determined not to review an ID (Order No. 59) granting complainant's motion for partial summary determination that a domestic industry exists with respect to complainant's trademarks.

The presiding administrative law judge (''ALJ'') held an evidentiary hearing on violation beginning on March 20, 2000. On March 24, 2000, the last day of the hearing, PTI filed a motion for dismissal of Brown & Williamson's complaint pursuant to Federal Rule of Civil Procedure (''FRCP'') 41(a), alleging that Brown & Williamson failed to set forth facts showing entitlement to relief for trademark infringement. The ALJ permitted complainant and the Commission investigative attorney (''IA'') to respond to PTI's motion in their posthearing briefs.

On June 22, 2000, the ALJ issued her final ID finding a violation of section 337 and denying PTI's motion to dismiss. She found that there had been imports of the accused products by intervenor PTI; that PTI's importation and sale of certain ''KOOL'' and ''LUCKY STRIKE'' cigarettes infringed the Brown & Williamson trademarks; that PTI's importation and sale of accused cigarettes diluted the Brown & Williamson trademarks; that PTI's importation and sale of accused cigarettes constituted a false designation of origin; that complainant had failed to demonstrate that PTI engaged in false advertising with respect to the accused cigarettes; that PTI's trademark dilution and false designation had the threat or effect of substantially injuring the domestic industry; and that PTI was not denied due process in proceedings before the ALJ in this investigation.

On June 27, 2000, the Commission determined to extend the date by which it was required determine whether to review the instant ID to August 28, 2000, and to extend the target date in this investigation to October 16, 2000.

On July 12, 2000, intervenor PTI filed a petition for review of the final ID. On July 17, 2000, complainant and the IA filed responses to the petition. On August 28, 2000, the Commission determined not to review the ID and requested written submissions on the issues of remedy, the public interest, and bonding. 65 FR 53334 (Sept. 1, 2000).

Submissions on remedy, the public interest, and bonding were received from complainant, intervenor PTI, and the IA. Reply submissions were received from complainant and the IA. Comments on the public interest were received from one U.S. Senator, nineteen Members of Congress, the National Association of Attorneys General, the Attorney General of Florida, the Petroleum Marketers Association of America, the National Association of Convenience Stores, and the National Grocers Association.

Having reviewed the record in this investigation, including the written submissions of the parties and the public comments, the Commission has determined that the appropriate form of relief is a general exclusion order prohibiting the unlicenced entry for consumption of KOOL and LUCKY STRIKE cigarettes manufactured by Brown & Williamson that infringe the eleven federally-registered Brown & Williamson trademarks (U.S. Reg. Nos. 118,372; 311,961; 335,113; 366,744; 404,302; 508,538; 747,482; 747,490; 2,055,297; 2,174,493; and 2,218,589), dilute the identified trademarks, or bear the identified trademarks and falsely represent that the trademark owner is the source of such product, and a cease and desist order directed to intervenor PTI, prohibiting the importation, sale for importation, or sale in the United States after importation of KOOL and LUCKY STRIKE cigarettes that infringe the Brown & Williamson trademarks.

The Commission has also determined that the public interest factors enumerated in subsections 1337(d) and (f) do not preclude the issuance of the general exclusion order and the cease and desist order, and that the bond during the Presidential review period shall be in the amount of seven dollars ($7.00) per carton of cigarettes.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

Copies of the Commission's orders, the public version of the Commission's opinion in support thereof, and all other nonconfidential 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, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired persons are advised that information can be obtained by contacting the Commission's TDD

terminal on (202) 205–1810. Public documents are available for downloading from the Commission's Internet server *(http://www.usitc.gov).* General information concerning the Commission may also be obtained by accessing its Internet server.

Issued October 16, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–27058 Filed 10–19–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–395]

Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Products Containing Same; Notice of Final Determination and Issuance of Limited Exclusion Order; Notice of Denial of Motions for Sanctions, for Attorney's Fees, and for Dismissal of Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and has issued a limited exclusion order in the above-captioned investigation. The Commission has also determined to deny a motion for dismissal of Atmel's complaint for unclean hands and motions for sanctions and attorney's fees.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–3152.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 18, 1997, based upon a complaint filed by Atmel Corporation alleging that Sanyo Electric Co., Ltd. (''Sanyo''), Winbond Electronics Corporation of Taiwan and Winbond Electronics North America Corporation of California (collectively ''Winbond''), and Macronix International Co., Ltd. and Macronix America, Inc. (collectively ''Macronix'') had violated section 337 in the sale for importation, the importation, and the sale within the United States after importation of certain erasable programmable read only memory (''EPROM''), electrically erasable programmable read only memory (''EEPROM''), flash memory, and flash microcontroller semiconductor devices, by reason of infringement of one or more claims of U.S. Letters Patent 4,511,811 (''the '811 patent''), U.S. Letters Patent 4,673,829 (''the '829 patent''), and U.S. Letters Patent 4,451,903 (''the '903 patent'') assigned to Atmel. 62 FR 13706 (March 21, 1997). Silicon Storage Technology, Inc. (''SST'') was permitted to intervene in the investigation.

On March 19, 1998, the presiding administrative law judge (''ALJ'') issued his final initial determination (''ID'') finding that respondents had not violated section 337, based on his finding that neither the '811 patent, the '829 patent, nor the '903 patent was infringed by any product imported and sold by respondents or intervenor. He also found, that the '903 patent is unenforceable because of waiver and implied license by legal estoppel, that claims 2–8 of that patent are invalid for indefiniteness, but that the '903 patent is not unenforceable for failure to name a co-inventor. Complainant Atmel petitioned for review of the ALJ's final ID, and on May 6, 1998 the Commission determined to review most of the ALJ's findings and requested written submissions on the issues of remedy, the public interest, and bonding. 63 FR 25867 (May 11, 1998).

On review, the Commission determined that the '811 patent and the '829 patent were invalid on the basis of collateral estoppel in light of a U.S. district court decision (*Atmel Corp.* v. *Information Storage Devices, Inc.,* No. C–95–1987–FMS, 1998 WL 184274 (N.D. Cal. April 14, 1998)), and that the '903 patent was unenforceable for failure to name a co-inventor. The investigation was terminated with a finding of no violation of section 337.63 FR 37133 (July 9, 1998).

On August 11, 1998, after issuance of the Commission opinion, Atmel filed a petition with the U.S. Patent and Trademark Office (''PTO'') to correct the inventorship of the '903 patent. The PTO granted Atmel's petition on August 18, 1998, and issued a certificate of correction on October 6, 1998.

On September 8, 1998, Atmel filed with the Commission a ''Petition For Relief From Final Determination Finding U.S. Patent No. 4,451,903 Unenforceable.'' Respondents and the Commission's Office of Unfair Import Investigations (''OUII'') filed responses to the petition. The Commission ruled on Atmel's petition on January 25, 1999. It determined to treat Atmel's petition as a petition for reconsideration, granted the petition, and reopened the record of the investigation for the limited purpose of resolving the issues arising from the PTO's issuance of the certificate of correction for the '903 patent. The investigation was remanded to the ALJ who issued an ID on May 17, 2000, finding that complainant Atmel had committed inequitable conduct at the PTO in the procurement of the certificate of correction for the '903 patent; that the inventors listed on the PTO certificate of correction are not the correct inventors; and that no inequitable conduct was shown to have taken place at the PTO in the prosecution of the original patent application that matured into the '903 patent.

On May 30, 2000, Atmel petitioned for review of the ID of May 17, 2000, and certain orders issued by the ALJ. Respondents, intervenor, and the Commission investigative attorney (''IA'') filed responses to Atmel's petition. On July 17, 2000, the Commission determined to review the ALJ's determination that the PTO certificate of correction for the '903 patent was procured inequitably; the ALJ's determination that the inventors named on the PTO certificate of correction are incorrect; the ALJ's ruling in Order No. 50 that Atmel had waived the attorney-client and attorney work product privileges; and the ALJ's ruling in Order No. 69 that Atmel bore the burden of proof by clear and convincing evidence that the inventors shown on the PTO certificate of correction are the correct inventors. The Commission requested briefs on the issues under review, and posed briefing questions for the parties to answer. The Commission also requested written submissions on remedy, the public interest, and bonding. 65 FR 45406 (July 21, 2000).

On August 28, 1998, Atmel appealed the Commission's ''no violation'' determination of July 2, 1998, to the U.S. Court of Appeals for the Federal Circuit. Sanyo, Winbond, Macronix, and SST intervened in support of the Commission. On November 6, 1998, Sanyo and Winbond moved to dismiss the portion of the appeal concerning the '903 patent. On December 8, 1998, the Federal Circuit stayed the appeal pending a ruling from the Commission on Atmel's then pending motion for the Commission to reconsider its prior determination on inventorship.

On February 10, 1999, Winbond filed a petition for a writ of mandamus with the Federal Circuit. Winbond asked the Federal Circuit to direct the Commission to vacate its January 25, 1999, order remanding the inventorship issue to the ALJ. Winbond argued that the Commission was without authority to grant relief from its final determination of ''no violation'' because