

In the Matter of

**CERTAIN AUTOMOTIVE FUEL
CAPS AND RADIATOR CAPS
AND RELATED PACKAGING
AND PROMOTIONAL
MATERIALS**

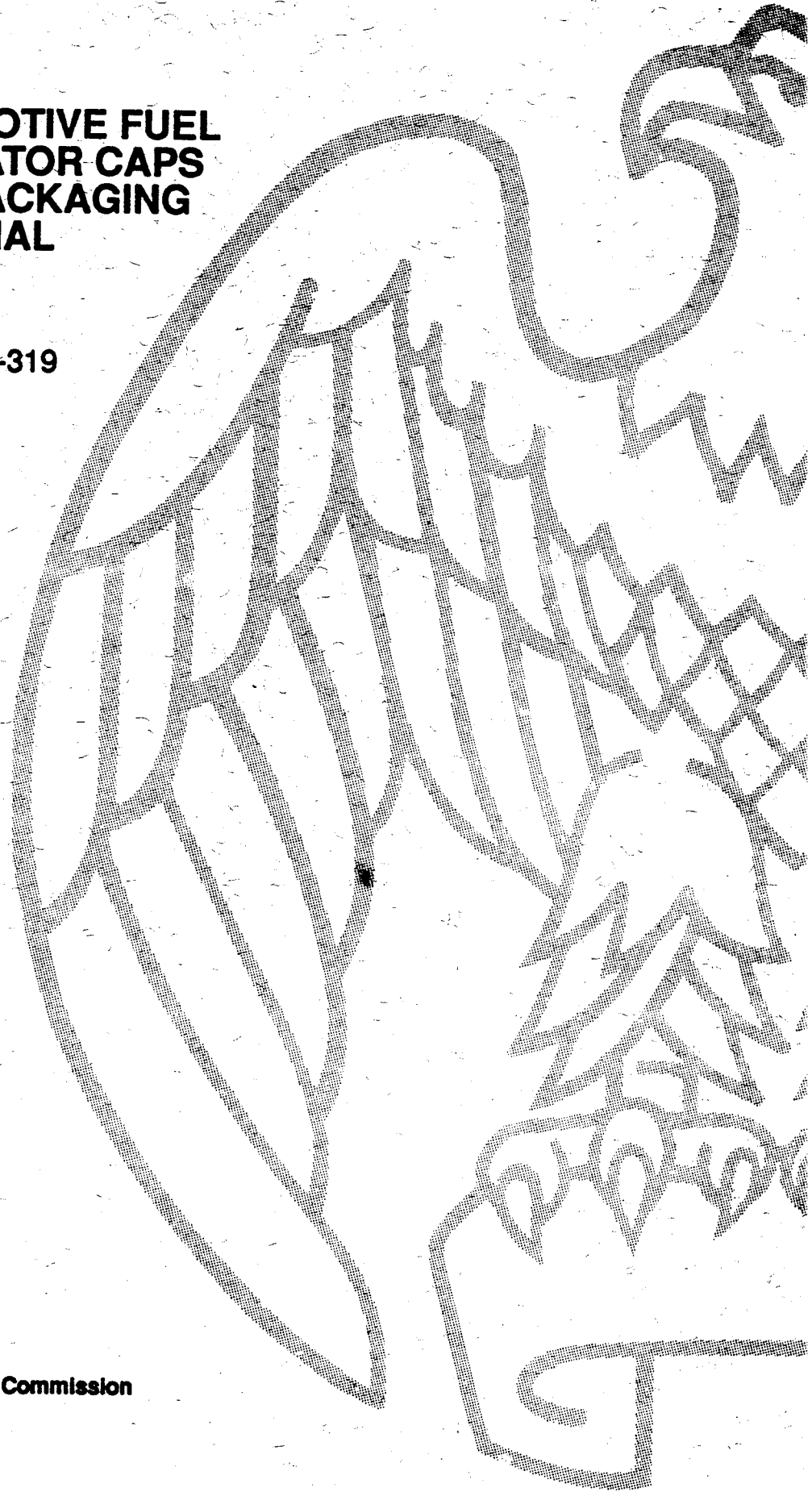
Investigation No. 337-TA-319

**(Commission Order of
August 16, 1991)**

USITC PUBLICATION 2481

FEBRUARY 1992

**United States International Trade Commission
Washington, DC 20436**



UNITED STATES INTERNATIONAL TRADE COMMISSION

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Washington, DC 20436**

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

In the Matter of)

CERTAIN AUTOMOTIVE FUEL CAPS AND)
RADIATOR CAPS AND RELATED PACKAGING)
AND PROMOTIONAL MATERIALS)
_____)

Investigation No. 337-TA-319

ORDER

On October 23, 1990, Stant, Inc., of Connersville, Indiana filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation and sale of certain automotive fuel caps and radiator caps and related packaging and promotional materials. The complaint alleged infringement of certain claims of U.S. Letters Patent Nos. 4,091,955, 4,177,931, 4,083,209, 4,765,505, 4,676,390, and 3,878,965; U.S. Trademark Reg. Nos. 1,507,054 and 814,666; and U.S. Copyright Reg. Nos. TX 1,783,598; TX 2,134,460, TX 2,344,359, TX 2,876,401, and TX 2,851,757.

The Commission instituted an investigation into the allegations of Stant's complaint and published a notice of investigation in the Federal Register. 55 Fed. Reg. 49434 (November 28, 1990) The notice of investigation named the following firms as respondents: Gin Seng Industrial Co., Ltd. of Tainan, Taiwan; Chieftain-Uniworld Corp. d/b/a Chieftain Automotive Products, of North Augusta, South Carolina; and Transworld Products, Inc. of Shawnee Mission, Kansas.

On March 5, 1991, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding respondents Gin Seng Industrial Co. ("Gin Seng") and Chieftain-Uniworld Co. ("Chieftain"), the last two respondents

Complainant and the Commission investigative attorneys filed proposed remedial orders and addressed the issues of remedy, the public interest, and bonding. No comments were filed by interested government agencies or other persons.

Having determined that there is a violation of section 337, the Commission considered the questions of the appropriate remedy, whether the statutory public interest factors preclude the issuance of a remedy, and bonding during the Presidential review period. The Commission considered the submissions of the parties and the entire record in the investigation. The Commission determined that the appropriate form of relief is a cease and desist order directed to the U.S. respondent Chieftain, and a limited exclusion order excluding products manufactured abroad by Gin Seng that are covered by the the claims at issue of U.S. Patent Nos. 4,091,955, 4,177,931, 4,083,209, 4,765,505, 4,676,390, or 3,878,965; U.S. Trademark Reg. Nos. 1,507,054 or 814,866; and U.S. Copyright Reg. Nos. TX 1,783,598, TX 2,134,460, TX 2,344,359 TX 2,876,401, or TX 2,851,757. The Commission further determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude the issuance of the aforementioned relief, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles concerned.

Copies of the Commission's orders and all other nonconfidential documents filed in connection with this investigation are 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

By order of the Commission.



Kenneth R. Mason
Secretary

Issued: August 16, 1991

- affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of claims 1-9 of U.S. Letters Patent 4,091,955, are excluded from entry into the United States for the remaining term of the patent, except under license of the patent owner.
2. Automotive fuel caps manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of claims 1-15 of U.S. Letters Patent 4,765,505, are excluded from entry into the United States for the remaining term of the patent, except under license of the patent owner.
 3. Automotive fuel caps manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of claims 1-12 of U.S. Letters Patent 4,177,931, are excluded from entry into the United States for the remaining term of the patent, except under license of the patent owner.
 4. Automotive fuel caps manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of claims 1-17 of U.S. Letters Patent 4,083,209, are excluded from entry into the United States for the remaining term of the patent, except under license of the patent owner.
 5. Automotive fuel caps manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of claims 1-36 and 38-42 of U.S. Letters Patent 4,676,390, are excluded from entry into the United States for the remaining term of the patent, except under license of the patent owner.
 6. Automotive radiator caps manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of claims 1-9 of U.S. Letters Patent 3,878,965, are excluded from entry into the United States for the remaining term of the patent, except under license of the patent owner.

7. Automotive parts catalogues manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd. of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by U.S. Trademark Registration Nos. 1,507,054 or 814,866 are excluded from entry into the United States except under license of the trademark owner.
8. Automotive parts catalogues manufactured or imported by or on behalf of Gin Seng Industrial Co., Ltd., of Tainan, Taiwan, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that are covered by any of U.S. Copyright Registration Nos. TX 1,783,598, TX 2,134,460, TX 2,344,359, TX 2,851,757, or TX 2,876,401, are excluded from entry into the United States except under license of the copyright owner.
9. In accordance with 19 U.S.C. § 1337(1), the provisions of this **Order** do not apply to automotive fuel caps, automotive radiator caps, or automotive parts catalogues imported by or for the United States.
10. The items identified in paragraphs 1 through 8 of this **Order** are entitled to entry into the United States under bond in the amount of one hundred (100) percent of their entered value from the day after this **Order** is received by the President, pursuant to 19 U.S.C. § 1337(j)(3), until such time as the President notifies the Commission that he approves or disapproves this **Order**, but in any event, no later than 60 days after the date of receipt of this **Order** by the President.
11. The Commission may amend this **Order** in accordance with the procedure described in section 211.57 of the Commission's Interim Rules of Practice and Procedure, 19 C.F.R. § 211.57.
12. A copy of this **Order** shall be served upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, and the Federal Trade Commission.
13. Notice of this **Order** shall be published in the Federal Register.

By order of the Commission.



Kenneth R. Mason
Secretary

Issued: August 16, 1991

Johnson JF

Public Version

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

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U.S. INTL. TRADE COMMISSION

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In the Matter of)

CERTAIN AUTOMOTIVE FUEL CAPS AND)
RADIATOR CAPS AND RELATED PACKAGING)
AND PROMOTIONAL MATERIALS)

Investigation No. 337-TA-319

COMMISSION OPINION

Procedural Background

On October 23, 1990, Stant, Inc. ("Stant") of Connersville, Indiana filed a complaint with the Commission alleging violations of section 337 in the importation and sale of certain automotive fuel caps and radiator caps and related packaging and promotional materials. The complaint alleged infringement of certain claims of U.S. Letters Patent Nos. 4,091,955, 4,177,931, 4,083,209, 4,765,505, 4,676,390, and 3,878,965; U.S. Trademark Reg. Nos. 1,507,054 and 814,666; and U.S. Copyright Reg. Nos. TX 1,783,598, TX 2,134,460, TX 2,344,359, TX 2,876,401, and TX 2,851,757.

On March 5, 1991, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding the two remaining respondents, Gin Seng Industrial Co. ("Gin Seng") and Chieftain-Uniworld Co. (Chieftain"), in default. On April 5, 1991, the Commission determined not to review the ID, and made an explicit finding that there had been a violation of section 337. The Commission solicited comments from the parties, interested government agencies, and other persons concerning the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorneys

(IAs) filed proposed remedial orders and briefed the issues of remedy, the public interest, and bonding. Complainant and the IAs requested issuance of a limited exclusion order, and a cease and desist order directed against Chieftain, the only domestic respondent remaining in the investigation, and a bond in the amount of 100 percent of the entered value of the articles in question during the Presidential review period.

Remedy

We agree with complainant Stant and the IAs that a limited exclusion order and a cease and desist order is the appropriate remedy. The orders do not apply to unassembled products, inasmuch as unassembled products were not mentioned in the complaint or notice of investigation, and there is no evidence of record that the accused products have been sold in disassembled form. A cease and desist order is appropriate in addition to a limited exclusion order because there is evidence of record indicating that [

].¹ The cease and desist order does not cover the copyrights and trademarks at issue in this investigation, because trademark and copyright infringement were not asserted against domestic respondent Chieftain.

Public Interest

Complainant asserts that the patented automotive fuel caps and radiator caps do not have general implications for the public health and welfare, are not necessary for public health reasons, and are not necessary to basic

¹ Response of Chieftain to Interrogatory No. 22 of the Staff (Jan. 2, 1991).

scientific research, and thus the issuance of relief is not precluded by public interest considerations. Complainant also asserts that domestic demand can be satisfied by its own production and by the production of noninfringing competitive products by other manufacturers.

The IAs state that there are no public interest concerns which would militate against entry of relief, and note that information obtained in discovery strongly suggests that complainant has the ability to meet the domestic demand for fuel caps.

We agree that the requested relief would not have an adverse effect 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, or United States consumers.

Bonding

Complainant recommends that a bond of 100 percent of the entered value of the articles in question be imposed during the Presidential review period. Complainant contends that a bond in the amount of 100 percent entered value is appropriate in order to offset any competitive advantage accruing to importers of infringing products and to protect complainant's property rights. Complainant contends that this amount is necessary due to the easy accessibility and the relative inexpensiveness of the infringing products.

The IAs agree that a bond in the amount of 100 percent of entered value is appropriate. They note that information obtained in discovery indicates that the unweighted average distributor price of three different models of accused products maintained in inventory is [], and that complainant's unweighted average distributor price for its corresponding model is []. The IAs note that Chieftain's average distributor price is [] of

complainant's distributor price. However, the IAs assert that because the bond will be assessed against the "entered value" of the infringing goods, and the record is silent as to the "entered value" of the accused products, a 100 percent bond is appropriate. They also note that there is no information with respect to Gin Seng's prices for the accused products or for their entered value. The IAs presume that Gin Seng's prices are lower than Chieftain's and that the competitive advantage with respect to complainant's domestic products is even greater, and therefore a 100 percent bond is appropriate as to Gin Seng's goods.

We agree that a bond of 100 percent of entered value is appropriate. Because this is a default case, the record is incomplete as to the relative prices of the domestic and imported products, and as to any other information which would allow us to determine the competitive advantage conferred on the allegedly infringing imports by reasons of respondent's unfair acts. We have in similar circumstances imposed a bond 100 percent of the entered value of the infringing goods. ²

² Certain Key Blanks for Keys of High Security Cylinder Locks, Inv. No. 337-TA-308; Certain Novelty Teleidoscopes, Inv. No. 337-TA-295.

UNITED STATES INTERNATIONAL TRADE COMMISSION
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In the Matter of)
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) Investigation No. 337-TA-319
CERTAIN AUTOMOTIVE FUEL CAPS AND)
RADIATOR CAPS AND RELATED PACKAGING)
AND PROMOTIONAL MATERIALS)
_____)

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Chieftain-Uniworld Corporation d/b/a Chieftain Automotive Products, 20 Revco Road, North Augusta, South Carolina 29841, **cease** and desist from marketing, distributing, offering for sale, selling, or otherwise transferring (except for reexportation) in the United States **certain** automotive fuel caps and radiator caps, 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 Stant, Inc., 1620 Columbia Avenue, Connersville, Indiana 47331.

(C) "Respondent" shall mean Chieftain-Uniworld Corporation d/b/a Chieftain Automotive Products, 20 Revco Road, North Augusta, South Carolina, 29841.

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business **entity**

other than the above Respondent or its majority owned and/or controlled subsidiaries, their successors, or assigns.

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

II

(Applicability)

The provisions of this Cease and Desist Order shall apply to Respondent and to its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, in accordance with Section VII hereof.

III

(Conduct Prohibited)

The following conduct of Respondent in the United States is prohibited by this Order. Respondent shall not:

(A) market, distribute, offer for sale, sell, or otherwise transfer (except for reexportation) in the United States imported automotive fuel caps that are covered by any of claims 1-9 of U.S. Letters Patent 4,091,955, claims 1-15 of U.S. Letters Patent 4,765,505, claims 1-12 of U.S. Letters patent 4,177,931, claims 1-17 of U.S. Letters Patent 4,083,209, or claims 1-36 or 38-42 of U.S. Letters Patent 4,676,390, for the respective remaining terms of those patents;

(B) market, distribute, offer for sale, sell or otherwise transfer (except for reexportation) in the United States imported radiator caps that are covered by any of claims 1-9 of U.S. Letters Patent 3,878,965 for the

remaining term of the patent.

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, Complainant licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of automotive fuel or radiator caps by or for the United States.

V

(Reporting)

For purposes of this reporting requirement, the reporting period shall commence on the first day of July, and shall end on the following last day of June. The first report required under this section shall cover the period August 16, 1991, through June 30, 1992. This reporting requirement shall continue in force until the latest date of expiration of the patents specified in Section III (Conduct Prohibited) herein, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this **Order**, that he disapproves this **Order**.

Any failure to report shall constitute a violation of this **Order**.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the following:

(A) The identity of every model of foreign-made fuel cap and radiator cap that Respondent has imported into or sold in the United States during the period; and

(B) The unit and dollar quantities of imports and sales for each model

identified pursuant to subparagraph V(A) of this Order.

VI

(Recordkeeping 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 imported automotive fuel and radiator caps, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of two (2) years from the close of the fiscal year to which they pertain.

(B) For the purposes 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 shall, upon reasonable written notice by the Commission or its staff, 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 chooses, all books, ledgers, accounts, correspondence, memoranda, financial reports, and other records and documents, both in detail and in summary form for the purpose of verifying any matter or statement contained in the reports required to be retained under subparagraph VI(A) of this Order.

VII

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) 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

marketing, distribution, or sale of imported fuel caps and radiator caps in the United States;

(B) Serve, within thirty (30) 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 date of expiration of the last of the patents specified in Section III (Conduct Prohibited) herein.

VIII

(Confidentiality)

Information obtained by means provided for in Sections V and VI of this **Order** will be made available only to the Commission and its authorized representatives, will be entitled to confidential treatment, and will not be divulged by any authorized representative of the Commission to any person other than duly authorized representatives of the Commission, except as may be required in the course of securing compliance with this **Order**, or as otherwise required by law. Disclosure hereunder will not be made by the Commission without ten (10) days prior notice in writing to Respondent.

IX

(Enforcement)

Violation of this Order may result in any of the actions specified in section 211.56 of the Commission's Interim Rules of Practice and Procedure, 19 C.F.R. § 211.56, including an action for 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 211.57 of the Commission's Interim Rules of Practice and Procedure, 19 C.F.R. § 211.57.

XI

(Bonding)

With respect to automotive fuel and radiator caps imported prior to August 16, 1991, the conduct prohibited by Section III of this Order may be continued during the period in which this order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930 (19 U.S.C. § 1337(j)), subject to Respondent posting a bond in the amount of one hundred (100) percent of the entered value of the articles in question. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Automotive and radiator caps imported on or after August 16, 1991, are subject to the entry bond as set forth in the limited


exclusion order issued by the Commission on August 16, 1991, 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 Interim Rule 210.58, 19 C.F.R. § 210.58. 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 President approves, or does not disapprove within the Presidential review period, the Commission's Orders of August 16, 1991, or any subsequent final order issued after the completion of Investigation 337-TA-319, 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 President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, 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.



Kenneth R. Mason
Secretary

Issued: August 16, 1991

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

In the Matter of)
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CERTAIN AUTOMOTIVE FUEL CAPS AND)
RADIATOR CAPS AND RELATED PACKAGING)
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Investigation No. 337-TA-319

NOTICE OF COMMISSION DETERMINATIONS

- (1) NOT TO REVIEW AN INITIAL DETERMINATION FINDING RESPONDENTS IN DEFAULT,
- (2) FINDING A VIOLATION OF SECTION 337 OF THE TARIFF ACT OF 1930, AND
- (3) REQUESTING SUBMISSIONS ON THE ISSUES OF
REMEDY, THE PUBLIC INTEREST, AND BONDING

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 presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation finding respondents Gin Seng Industrial Co. ("Gin Seng") and Chieftain-Uniworld Corp. ("Chieftain") in default, and that they have thereby waived their right to appear, to be served with documents, and to contest the allegations in issue in this investigation. The Commission has also made an explicit finding of violation of section 337 of the Tariff Act of 1930 by Gin Seng and Chieftain, which finding is implicit in the ID.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1098.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determinations is contained in Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in sections 210.53 and 210.58 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. §§ 210.53 and 210.58).

On October 23, 1990, Stant Inc. ("Stant") filed a complaint with the Commission alleging violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain automotive fuel caps and radiator caps and related packaging and promotional materials which allegedly infringe certain claims of U.S. Letters Patent Nos. 4,091,955, 4,177,931, 4,083,209, 4,765,505, 4,676,390, and 3,878,965; U.S. Trademark Reg. Nos. 1,507,054 and 814,866; and U.S. Copyright Reg. Nos. TX 1,783,598, TX 2,134,460, TX 2,344,359, TX 2,876,401 and TX 2,851,757.

The Commission instituted an investigation into the allegations of Stant's complaint and published a notice of investigation in the Federal Register, 55 F.R. 49435 (November 28, 1990). The notice named Gin Seng, Chieftain, and Transworld Products Inc. ("Transworld") as respondents.

The investigation was terminated as to respondent Transworld on the basis of a settlement agreement.

On March 5, 1991, the ALJ issued an ID finding respondents Gin Seng and Chieftain in default, and that they had waived their right to appear, to be served with documents, and to contest the allegations in issue in this investigation. On March 7, 1991, respondent Stant filed a declaration under interim rule 210.25(c), 19 C.F.R. 210.25(c), indicating that it sought an "appropriate limited exclusion order and cease orders, but not a general exclusion order". No persons filed petitions for review of the ID and no government agencies submitted comments.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in respondent 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 the Commission contemplates some form of remedy, it must consider the effect of that remedy upon the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles that are like or directly competitive with those that are subject to the 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.

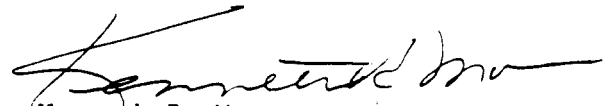
If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond that should be imposed.

WRITTEN SUBMISSIONS: The parties to this investigation, interested government agencies, and any other persons are invited to file written submissions on the issues of **remedy**, the public interest, and bonding. Complainant has already submitted a proposed exclusion order and a proposed cease and desist order for the Commission's consideration. The Commission investigative attorney is requested to submit a proposed exclusion order and/or proposed cease and desist order for the Commission's consideration. Any written submissions must be filed by April 19, 1991. Reply submissions must be filed by April 26, 1991.

ADDITIONAL INFORMATION: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) 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 is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are 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 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.



Kenneth R. Mason
Secretary

Issued: April 8, 1991

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of:)
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CERTAIN AUTOMOTIVE FUEL CAPS)
AND RADIATOR CAPS AND RELATED)
PACKAGING AND PROMOTIONAL)
MATERIALS)
)

Investigation No. 337-TA-319

Rec'd 3.5.91

Order No. 29: Initial Determination Finding Respondents Gin Seng and Chieftain In Default and Hence to Have Waived Their Right to Appear, To Be Served With Documents and to Contest The Allegations In Issue In This Investigation

On February 21, 1991 Order No. 24, based on the conduct of respondents Gin Seng Industrial Co., Ltd. (Gin Seng) and Chieftain-Uniworld Corp. d/b/a Chieftain Automotive Products (Chieftain) and their former counsel, "to date in this investigation," pursuant to interim rule 210.25(b), ordered respondents Gin Seng and Chieftain to show cause in document form no later than the close of business on Friday March 1, 1991, why they should not be found to have waived their right to appear, to be served with documents, and to contest the allegations in issue in this investigation.

No responses from either respondent Gin Seng or respondent Chieftain to Order No. 24 were received which is consistent with the representations of complainant and the staff, referenced in Order No. 27 which issued February 22, 1991, that there had been an indication from respondents that neither was going to participate further in this investigation.

In Order No. 24, the administrative law judge found the conduct of respondents while represented by counsel to be totally irresponsible and unparalleled in any of the section 337 investigations that he has presided over and in which counsel has appeared for a party. Thus, as of the date of

Order No. 24, which was some three months after the investigation was instituted on November 20, 1990 and approximately six weeks before the April 11, 1991 discovery cut-off date, it was noted that complainant and the staff had obtained little discovery while their resources and those of the Commission have been unfairly burdened. Respondents' acts or omissions, while represented by counsel, in disregard of the Commission's interim rules, the ground rules and/or the orders of the administrative law judge and which appeared to evidence a total disregard for the orderly conduct of this investigation included, although not necessarily limited to, the following:

For at least the first month of this investigation, respondents did not follow the applicable ground rules with respect to service. As a result, exchange of pleadings and other information was delayed and confused. See Notice (second) of December 28, 1990 to the Parties; Order No. 3.

Despite the participation of counsel from Klayman & Associates, P.C. in this investigation as attorneys for respondents, including representation of respondent Chieftain at the Preliminary Conference held on January 16, 1991, it was not until January 18, 1991 that respondents' counsel filed a "General Notice of Appearance," effective from December 18, 1990. On December 18, 1990, Klayman & Associates had filed a "Limited Notice of Appearance" as counsel for Chieftain. This created confusion as to Chieftain's representation, and required the administrative law judge to devote part of the preliminary conference to clarifying matters for the parties and the record. See Prelim. Conf. Tr. at 3-14; Order No. 6.

Despite the requirements of Commission rule 210.5, respondents' responses to the complaint and notice of investigation were filed on January 8, 1991 with the signatures of officers of the parties, rather than the signatures of counsel. Signature pages from respondents' counsel were not provided until January 22, 1991. Respondents' responses to complainant's Motion 319-8 consisted of merely the signature pages and a cover letter stating that the said motion was moot. See Order No. 9.

Respondents, through their counsel, did not comply with Commission interim rule 210.21(b) with regard to their affirmative defenses, and further, failed to comply with Order No. 10.¹

¹ Order No. 24 struck the remaining affirmative defenses.

Order No. 13 issued granting complainant's Motion No. 319-9 to compel respondents to comply with discovery requests, including complainant's First Set of Interrogatories and its First Requests for Production of Documents and Things. Said motion addressed, inter alia, interrogatories directed toward respondents' affirmative defenses. In its motion, complainant even detailed what it termed "egregious conduct" on the part of respondents. However, no response from respondents' counsel was received to the motion, despite that fact that Commission interim rule 210.24(c) provides that "a nonmoving party . . . shall respond or he may be deemed to have consented to the granting of the relief asked for in the motion."

Order No. 14 issued granting staff's Motion No. 319-11 to compel respondents to provide complete and responsive answers to staff's First Set of Interrogatories to respondents and staff's First Requests for Production of documents and things from respondents. Said motion addressed, inter alia, respondents' affirmative defenses. Again, no response from respondents' counsel was received to a substantive discovery motion.

Order No. 20 issued granting in part complainant's Motion 319-14 to compel respondents to comply with complainant's discovery requests, including its First Set of Requests for the Production of Documents and Things and its Notices of Deposition to L.B. Schwimmer and Robert Thompson. Again, no response was received to a substantive discovery motion.

Order No. 13, supra, required compliance with discovery requests no later than February 5, 1991 which was the same day on which respondents' counsel served its Motion No. 319-20, at about 5:13 p.m., for an order extending the time for respondents to respond to Order No. 13 and Order No. 17. Respondents and their counsel were put on notice (as a courtesy) in note 1 of Order No. 21, which denied Motion No. 319-20, that the filing of a motion for extension of time does not suspend a due date when imposed by the administrative law judge, and that on procedural grounds, respondents had therefore failed to comply with Order No. 13.

Order No. 22 denied respondents' Motion No. 319-21 for leave to file a reply to complainant's and staff's response to Motion No. 319-20. Order No. 22, at note 2, reminded counsel for respondents that, as discussed at the preliminary conference (Tr. 15-16), the Commission interim rules do not authorize the filing of a reply without leave, and that it was not unusual for a party to alert the administrative law judge through the attorney advisor that a motion for leave to file a reply was forthcoming. Moreover, in the case of respondents' Motion No. 319-21, said motion for leave to file a reply in connection with Motion 319-20 was served at about 5:00 p.m., which, as stated in Order No. 22, was after counsel for respondents were notified by telephone (at about 4:40 p.m.) that Motion No. 319-20

(to which the reply was directed) had already been denied in Order No. 21.

On February 5, 1991 complainant moved for an order compelling respondents to comply fully with complainant's Second Set of Interrogatories and its Second Requests For Production of Documents and Things. (Motion Docket No. 319-19). Respondents failed to respond to this motion. Although respondents are no longer represented by counsel from Klayman & Associates, P.C., respondents could have responded on their own behalf or obtained other counsel.

Since the filing of complainant's Motion No. 319-16, respondents have failed to comply with Order No. 14 compelling respondents to provide complete responses to specified discovery requests of the staff.²

Since the filing of the motions in issue, on February 13, 1991, complainant served its motion for sanctions under rule 210.36(b) in which it represented that complainant still had not received any documents from respondents, any deposition testimony or any discovery responses which were not incomplete, nonresponsive or evasive. Complainant also represented in said motion that as of 3:00 p.m. on February 13, 1991, respondents had yet to contact complainant about scheduling the depositions of Messrs. Schwimmer and Thompson. Order No. 20 had granted in part complainant's Motion No. 319-14 to compel, and required counsel for respondents to contact counsel for complainant by noon on February 13, 1991, to schedule depositions of Schwimmer and Thompson. Complainant further represented that despite withdrawal of counsel on February 11, 1991, complainant assumed that Chieftain was still compelled to comply with Order No. 20.

Thus respondents (on their own and through their counsel) had engaged in a course of continued dilatory conduct. That conduct included failing to respond to motions such as Motion Nos. 319-9 and 319-11 (relating to affirmative defenses) that could have materially altered the scope of this investigation (see Order No. 20), failing to comply with orders and rules

² Order No. 14 required respondents to provide specified discovery by February 8, 1991. Ground rule 4(iii) requires that two copies of discovery responses (with the exception of documents produced) be served on the administrative law judge. No copies of any discovery produced in response to Order No. 14 were received by the administrative law judge.

relating to the adequacy of respondents' affirmative defenses (which had been a significant portion of respondents' responses to the complaint and notice of investigation), as well as failing to provide important discovery that is crucial to the development of a factual record in this investigation.


On February 22, 1991 Order No. 27, which related to Motion No. 319-25 of complainant for sanctions of Gin Seng and Chieftain for violations of Order Nos. 13 and 20, noted that respondents' failure to even respond to each of Order Nos. 13 and 20 was referenced in Order No. 24 and that respondents' total lack of response to Motion No. 319-25 is yet additional support for the representations of the complainant and the staff, referenced in Order No. 27, that neither respondents intended to participate in this investigation.

Based on the foregoing, pursuant to interim rule 210.25, Gin Seng and Chieftain are each found in default and thus, in this investigation, each is found to have waived its right to appear, to be served with documents and to contest the allegations at issue in this investigation.

This initial determination is hereby CERTIFIED to the Commission.

This initial determination shall become the determination of the Commission thirty days after the service thereof, unless the Commission, within thirty days of the filing date of this initial determination shall have ordered review of this initial determination, or certain issues therein pursuant to Commission Interim rule 210.54(b) or 210.55, or by such other time as the Commission may order.

On March 5, 1991 counsel for complainant and the staff were notified
about the issuance of this order


Paul J. Luckern
Administrative Law Judge

Issued: March 5, 1991

Rukey

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of:)
)
CERTAIN AUTOMOTIVE FUEL CAPS)
AND RADIATOR CAPS AND RELATED)
PACKAGING AND PROMOTIONAL)
MATERIALS)
)

Investigation No. 337-TA-319

191
MAR 28
10:36

Notice To The Commission Supplementing The Initial
Determination of March 5, 1991

On March 5, 1991 an initial determination (Order No. 29), pursuant to interim rule 210.25, found the only respondents in the investigation in default.¹ On March 7, complainant confirmed, pursuant to interim rule 210.25(c), that it will seek an "appropriate limited exclusion order and cease and desist orders, but not a general exclusion order."²

Accordingly the administrative law judge CERTIFIES to the Commission the record of this investigation, including the filing of complainant on March 7, for appropriate action. The pleadings of the parties are not certified, since they are already in the Commission's possession in accordance with Commission

¹ Interim rule 210.25(c) states in pertinent part:

The complainant shall declare at the time the last remaining respondent is found to be in default whether the complainant is seeking a general or limited exclusion order, or a cease and desist order, or both. In cases in which the complainant is seeking relief solely affecting the respondent found to be in default, the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion order or cease and desist order, or both, which affects only that respondent unless ...

² On March 1, 1991 complainant filed a declaration to the same effect should the administrative law judge find the respondents in default.

rules and practice.

On March 8, 1991 counsel for complainant and the staff were notified about the issuance of this notice.



Paul J. Luckern
Administrative Law Judge

Issued: March 8, 1991

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

<u>IN THE MATTER OF CERTAIN AUTOMOTIVE</u>)	
<u>FUEL CAPS AND RADIATOR CAPS AND</u>)	Investigation No.
<u>RELATED PACKAGING AND PROMOTIONAL</u>)	337-TA-319
<u>MATERIALS</u>)	
)	Paul J. Luckern-ALJ
)	

COMPLAINANT'S SUPPLEMENTAL DECLARATION
PURSUANT TO RULE 210.25(C)

On March 1, 1991, Complainant filed a Declaration Pursuant to Rule 210.15(c), stating that should the Administrative Law Judge find Respondents Gin Seng Industrial Co., Ltd. ("Gin Seng") and Chieftain-Uniworld Corporation d/b/a Chieftain Automotive Products ("Chieftain") to be in default, Complainant will seek appropriate limited exclusion and cease and desist orders, but not a general exclusion order.

On March 29, 1991, Administrative Law Judge Luckern issued Order No. 29: Initial Determination Finding Respondents Gin Seng and Chieftain in Default and Hence to Have Waived Their Right to Appear, To Be Served With Documents and to Contest The Allegations In Issue In This Investigation. Complainant hereby confirms, pursuant to Commission Rule 210.25(c), that it will seek appropriate

limited exclusion and cease and desist orders, but not a
general exclusion order.

Respectfully submitted,



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March 7, 1991

Counsel for Complainant
Stant Inc.