

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN FOAM MASKING TAPE

Inv. No. 337-TA-528

**NOTICE OF ISSUANCE OF GENERAL EXCLUSION ORDER AND TERMINATION
OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Having found a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order and terminated the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 205-3095. Copies of all 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, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by 3M Company, 3M Innovative Properties Company, and Mr. Jean Silvestre (collectively, "3M"), which was subsequently amended. *70 Fed. Reg.* 386 (Jan. 4, 2005). The complaint, as amended, alleged a violation of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation and/or sale within the United States after importation, of certain foam masking tape by reason of infringement of certain claims of U.S. Patents Nos. 4,996,092 ("the '092 patent") and 5,260,097 ("the '097 patent"). The notice of investigation named 13 respondents.

On February 10, 2005, 3M filed a motion to amend the complaint and notice of investigation to add two respondents. On March 1, 2005, the administrative law judge ("ALJ")

issued an initial determination (“ID”) (Order No. 14) granting the motion. No party petitioned for review. On March 29, 2005, the Commission issued a notice of its determination not to review the ID.

Between February and June of 2005, the investigation was terminated as to 14 of the 15 respondents on the basis of settlement agreements and consent orders, or based on consent orders alone. With respect to Jevtec, Ltd. – the sole respondent as to which the investigation was not terminated – 3M moved on May 17, 2005, for an order directing Jevtec to show cause why it should not be found in default for failure to respond to the amended complaint and notice of investigation. 3M also requested the issuance of an ID finding Jevtec in default if Jevtec failed to show such cause.

On May 26, 2005, 3M moved for a summary determination of a violation of section 337. On June 6, 2005, the Commission investigative attorney (“IA”), filed a response in support of the motion for summary determination.

On June 7, 2005, the ALJ issued Order No. 36, ordering Jevtec to show cause why it should not be held in default no later than June 14, 2005. Jevtec did not file a response to the order, an answer to the complaint, or a notice of appearance within the time permitted. On June 15, 2005, the ALJ issued an ID (Order No. 39) finding Jevtec in default. No party petitioned for review of the ID. On July 11, 2005, the Commission determined not to review that initial determination.

On June 21, 2005, the ALJ issued an ID (Order No. 41), granting 3M’s motion for a summary determination of a violation of section 337. The ID notes that only the ‘097 patent is at issue in the summary determination, because the investigation has been terminated with respect to all respondents charged with infringement of the ‘092 patent. No party petitioned for review of the ID.

In Order No. 41, the ALJ recommended the issuance of a general exclusion order. He also recommended that the bond permitting temporary importation during the Presidential review period be set at 100 percent of the value of the infringing imported product.

On July 15, 2005, the Commission determined not to review the ALJ’s summary determination that 3M has shown that there is a violation of section 337. It also issued a *Federal Register* notice, inviting written submissions on the ALJ’s recommended determination on remedy and bonding as well as submissions on the public interest.

On July 25, 2005, the Commission received comments from complainant 3M and the IA. No reply submissions were received.

Having examined the relevant portions of the record, including ALJ Order No. 41, and the written submissions on remedy, the public interest and bonding, the Commission has determined to issue a general exclusion order prohibiting unlicensed entry for consumption of

foam masking tape that is covered by claims 1, 7, 8, 10, 11, 13, 14 or 16 of the '097 patent. In so doing the Commission determined that the public interest factors enumerated in section 337(d) do not preclude the issuance of the aforementioned remedial order and the bond during the Presidential review period shall be 100 percent of the entered value of the article in question. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and sections 210.42 and 210.50 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42 and 210.50.

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: October 31, 2005