

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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U.S. INTERNATIONAL TRADE COMMISSION
2008 MAY 21 PM 1:44

In the Matter of

CERTAIN HAIR IRONS AND PACKAGING THEREOF

Inv. No. 337-TA-637

Order No. 8: INITIAL DETERMINATION Terminating The Investigation As To Respondent Dongguan Fumeikang Electrical Technology Co., Ltd. On The Basis Of A Consent Order

By publication of a notice in the *Federal Register* on March 14, 2008, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, the Commission instituted this investigation to determine:

[W]hether there is a violation of subsection (a)(1)(C) 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 hair irons and packaging thereof that infringe U.S. Trademark Registration No. 2,660,257, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

73 Fed. Reg. 13918 (2008).

The complainant is Farouk Systems, Inc. (“FSI”) of Houston, Texas. The respondents are CHI Systems Singapore Pte. Ltd. of Singapore; Princess Silk, LLC of Lake Forest, California; Kamashi International of Hong Kong, China; Mount Rise Ltd. of Dongguan, China; and Dongguan Fumeikang Electrical Technology Co., Ltd. (“Dongguan Fumeikang”) of Dongguan, China. The Commission Investigative Staff (“Staff”) of the Office of Unfair Import Investigations is also a party in this investigation. *Id.*

FSI and Dongguan Fumeikang filed a joint motion for termination of this investigation as

to Dongguan Fumeikang on the basis of a consent order. (Motion No. 637-4). A consent order stipulation and a proposed consent order are attached to the joint motion. The Staff filed a response in support of the motion.

The proposed consent order provides that “Dongguan Fumeikang shall not sell for importation into the United States, import into the United States or sell in the United States after importation any Disputed Product, except under consent or license from FSI.” Proposed Consent Order at 4, ¶ 1.

In compliance with 19 C.F.R. § 210.21(c)(3)(i)(A)-(B), the consent order stipulation contains: an admission of all jurisdictional facts; an express waiver of all rights to seek judicial review or otherwise challenge or contest the validity of the consent order; a statement that the signatories to the consent order stipulation will cooperate with and will not seek to impede by litigation or other means the Commission’s efforts to gather information under subpart I of part 210 of the Commission’s Rules; a statement that the enforcement, modification, and revocation of the consent order will be carried out pursuant to subpart I; a statement that the consent order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable; and a statement that Dongguan Fumeikang will not seek to challenge the validity of the intellectual property right(s), in any administrative or judicial proceeding to enforce the consent order. *See* Consent Order Stipulation at 2-4.

The Commission’s Rules provide that in the case of a proposed termination by settlement agreement, consent order, or arbitration agreement, the parties may file statements regarding the


impact of the proposed termination on the public interest, and the Administrative Law Judge may hear argument, although no discovery may be compelled, with respect to issues relating solely to the public interest. The Administrative Law Judge is directed to consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the United States, and United States consumers.

See 19 C.F.R. § 210.50(b)(2).

The Staff is not aware of any information indicating that termination of this investigation as to Dongguan Fumeikang on the basis of the proposed consent order would be contrary to the public interest. *See* Staff Resp. at 1, 4. Furthermore, termination of litigation under these circumstances is generally in the public interest.

Accordingly, it is the INITIAL DETERMINATION of the undersigned that Motion No. 637-4 is GRANTED. This investigation is terminated as to Dongguan Fumeikang. Inasmuch as other respondents remain, this investigation is not terminated in its entirety.

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

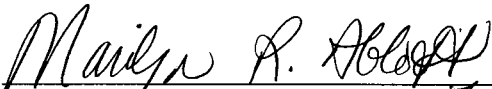


Carl C. Charneski
Administrative Law Judge

Issued: May 21, 2008

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** was served upon **Aarti Shah, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and airmail where necessary on May 22, 2008.


Marilyn R. Abbott, Secretary *JNB*
U.S. International Trade Commission
500 E Street, SW, Room 112A
Washington, D.C. 20436

FOR COMPLAINANT FAROUK SYSTEM, INC.:

Philippe M. Bruno, Esq.
Mark L. Hogge, Esq.
Rosa S. Jeong, Esq.
Shailendra Maheshwari, Esq.
GREENBERG TRAUIG, LLP
2101 L St., N.W.
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**FOR RESPONDENT DONGGUAN FUMEIKANG ELECTRICAL
TECHNOLOGY CO., LTD.:**

Susan Ning, Esq.
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Chaoyang District, Beijing 100020,
China

RESPONDENTS:

CHI Systems Singapore Pte. Ltd.
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Princess Silk, LLC
and
Cindy Virk d/b/a Princess Silk
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Baidi Industrial Zone
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**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

**Before the Honorable Carl C. Charneski
Administrative Law Judge**

In the Matter of

**CERTAIN HAIR IRONS AND
PACKAGING THEREOF**

Investigation No. 337-TA-637

**JOINT MOTION FOR TERMINATION OF INVESTIGATION
AS TO RESPONDENT
DONGGUAN FUMEIKANG ELECTRICAL TECHNOLOGY CO., LTD.
BASED UPON A CONSENT ORDER**

Pursuant to Commission Rule of Practice and Procedure 210.21(c) (19 C.F.R. § 210.21(c)), Complainant Farouk System, Inc. ("Complainant") and Respondent Dongguan Fumeikang Electrical Technology Co., Ltd. ("Dongguan Fumeikang") hereby move to terminate this Investigation as to Respondent Dongguan Fumeikang based upon the Consent Order Stipulation and Proposed Consent Order submitted concurrently herewith.

Other than the Consent Order Stipulation, there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.

The Consent Order Stipulation contains the admissions, waivers, statements, and other requirements set forth in Commission Rule 210.21(c). Furthermore, termination of this Investigation as to Dongguan Fumeikang is in the interest of the public and administrative economy.

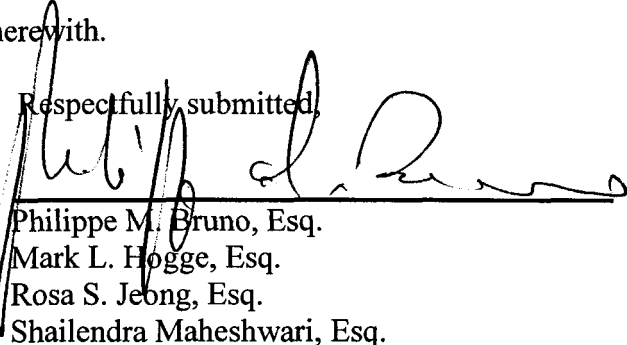
Complainant and Respondent have consulted with the Commission Investigative Attorney regarding this motion. The Commission Investigative Attorney will provide the

position of the Office of Unfair Import Investigations after reviewing the attached papers in more detail.

Accordingly, Complainant and Respondent Dongguan Fumeikang respectfully request that the Administrative Law Judge issue an initial determination terminating this Investigation as to Respondent Dongguan Fumeikang Electrical Technology Co., Ltd. on the basis of the Proposed Consent Order submitted concurrently herewith.

Dated: May 8, 2008

Respectfully submitted,



Philippe M. Bruno, Esq.
Mark L. Hogge, Esq.
Rosa S. Jeong, Esq.
Shailendra Maheshwari, Esq.
Michelle A. Manweiler, Esq.
GREENBERG TRAURIG, LLP
2101 L St., N.W. Suite 1000
Washington, D.C. 20037

Counsel for Complainant Farouk System, Inc.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Before the Honorable Carl C. Charneski
Administrative Law Judge



In the Matter of

**CERTAIN HAIR IRONS AND
PACKAGING THEREOF**

Investigation No. 337-TA-637

CONSENT ORDER STIPULATION

WHEREAS, the United States International Trade Commission ("Commission") on February 12, 2008, instituted the above-captioned Investigation under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), based on the allegations contained in the complaint filed by Complainant Farouk Systems, Inc. ("FSI"), which alleges unfair acts in the importation into the United States, the sale for importation and the sale within the United States after importation of certain hair irons and packaging thereof bearing the registered trademark CHI[®] by, among others, Respondent Dongguan Fumeikang Electrical Technology Co., Ltd. ("Dongguan Fumeikang"); and

WHEREAS, FSI and Dongguan Fumeikang agree to all terms set forth in the Consent Order in the form attached hereto as Exhibit A.

THEREFORE, FSI and Dongguan Fumeikang through their respective duly authorized officers agree hereby as follows::

1. FSI is a Texas corporation with its principal place of business at 250 Pennbriht, Suite 150, Houston, TX 77090. For the purposes hereof "FSI" shall include Farouk Systems, Inc.

and all of its affiliates, successors, officers, directors, agents, attorneys, and assigns, or other persons or entities acting on its behalf.

2. Respondent Dongguan Fumeikang is a corporation organized under the laws of the People's Republic of China, with its principal place of business at No.17 Building, Yinhu Industrial Area, Xiegang Town, Dongguan City, Guangdong Province China. For the purposes hereof, "Dongguan Fumeikang" shall mean Dongguan Fumeikang Electrical Technology Co., Ltd. and all of its affiliates, successors, officers, owners, directors, managers, agents, and assigns, or other persons or entities acting on its behalf.

3. Both FSI and Dongguan Fumeikang are represented by counsel in this investigation and have received advice from counsel for purpose of the Consent Order Stipulation.

4. "CHI[®]" means the CHI[®] trademark covering electric hair curling irons in Class 9 in U.S. Trademark Registration No. 2,660,257 (issued December 10, 2002).

5. "Disputed Products" mean any hair irons and packaging thereof bearing the trademark CHI[®].

6. "Inventory" means inventory of Disputed Products in the United States.

7. Dongguan Fumeikang warrants and represents it does not have any Inventory.

8. FSI and Dongguan Fumeikang agree to the entry of a Consent Order in the form attached hereto as Exhibit A.

9. The Commission has *in rem* jurisdiction over the subject hair irons which are the subject of the complaint in this Investigation and the Commission has *in personam* jurisdiction over Dongguan Fumeikang for purposes of this Stipulation and proposed Consent Order by virtue of Dongguan Fumeikang having appeared through counsel in this proceeding. Nothing in

this Stipulation or the proposed Consent Order shall be construed as meaning that Dongguan Fumeikang has submitted to the jurisdiction of any other court.

10. FSI and Dongguan Fumeikang expressly waive all right to seek judicial review or otherwise challenge or contest the validity of the Consent Order.

11. Dongguan Fumeikang and FSI will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's rules of Practice and Procedure, 19 C.F.R. Part 210.

12. The enforcement, modification and revocation of the Consent Order will be carried out pursuant to subpart I of the Commission's Rules of Practice and Procedure, 19 C. F. R. Part 210.

13. Dongguan Fumeikang will not seek to challenge the validity of the CHI[®] trademark in any administrative or judicial proceeding to enforce the Consent Order

14. The signing of this Consent Order Stipulation is for settlement purposes only and does not constitute an admission by Dongguan Fumeikang that an unfair act has been committed.

15. The Consent Order shall not grant nor be interpreted to grant any rights, authority or license to Dongguan Fumeikang to use the CHI[®] trademarks on any products or to make the Disputed Products without the express approval of FSI; all rights thereof and thereto being expressly reserved to FSI.

16. Dongguan Fumeikang agrees that it will not contest the legal conclusions or findings of fact determined by the Commission in any final determination in this Investigation.

17. Dongguan Fumeikang agrees that it will not sell for importation into the United States, import into the United States, or sell after importation in the United States any Disputed Product, except under consent or license from FSI.

18. FSI and Dongguan Fumeikang will execute and file with the Commission a Joint Motion for Termination of the Investigation as to Dongguan Fumeikang Electrical Technology Co., Ltd. Based upon Entry of a Consent Order to request that the Investigation Number 337-TA-637 be terminated as to Dongguan Fumeikang.

19. The provisions of the Consent Order in Exhibit A shall become null and void if U.S. Trademark Registration No. 2,660,257 expires without renewal or is determined to be invalid or unenforceable by the Commission, a court or agency of competent jurisdiction in a final decision, provided that such a finding or judgment has become final and non-reviewable.

In WITNESS WHEREOF FSI and Dongguan Fumeikang have caused their duly authorized representative to execute this document on their behalf as an instrument of the date indicated, and request entry of the Consent Order in the form attached hereto as Exhibit A.

18/05/2014

IT IS SO STIPULATED

Farouk Systems, Inc.

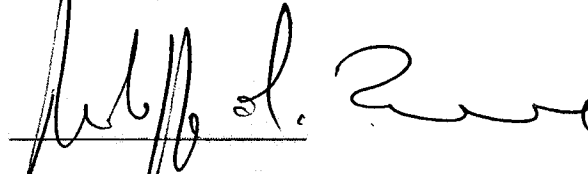
By: 

Authorized Signature:

Dated: 05/05/2008

Dated: May 8, 2008

Respectfully submitted,



Philippe M. Bruno, Esq.

Mark L. Hogge, Esq.

Rosa S. Jeong, Esq.

Shailendra Maheshwari, Esq.

Michelle A. Manweiler, Esq.

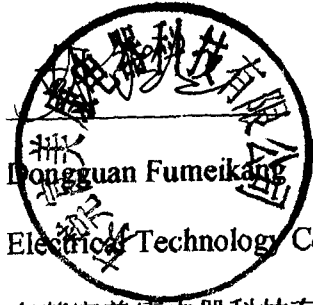
GREENBERG TRAURIG, LLP

2101 L St., N.W. Suite 1000

Washington, D.C. 20037

Counsel for Complainant Farouk System, Inc.

IT IS SO STIPULATED



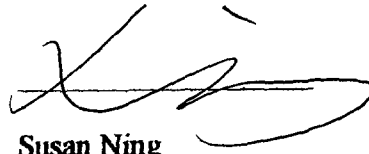
Dongguan Fumeikang
Electrical Technology Co., Ltd.

东莞富美康电器科技有限公司

Dated: 2008-04-29

Dated: May 8, 2008

Respectfully submitted,



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(8610) 5878-5010 (Telephone)
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*Counsel for Respondent Dongguan
Fumeikang Electrical Technology Co.,
Ltd.*

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

**Before the Honorable Carl C. Charneski
Administrative Law Judge**

In the Matter of

**CERTAIN HAIR IRONS AND
PACKAGING THEREOF**

Investigation No. 337-TA-637

**PROPOSED CONSENT ORDER AS TO
RESPONDENT DONGGUAN FUMEIKANG ELECTRICAL TECHNOLOGY CO., LTD.**

The United States International Trade Commission (“Commission”) on February 12, 2008 instituted the above-captioned Investigation under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), based upon the allegations contained in the complaint filed by Complainant Farouk Systems, Inc. (“FSI”), which allege unfair acts in the importation into the United States, the sale for importation and the sale within the United States after importation of certain hair irons bearing the trademark CHI[®] by, among others, by Respondent Dongguan Fumeikang Electrical Technology Co., Ltd. (“Dongguan Fumeikang”).

FSI and Dongguan Fumeikang have executed a Consent Order Stipulation in which they agree to the entry of this Consent Order, and have filed a Joint Motion for Termination of the Investigation as to Dongguan Fumeikang Electrical Technology Co., Ltd. based upon Entry of this Consent Order. In the Consent Order Stipulation, FSI and Dongguan Fumeikang agree to the following findings:

A. FSI is a Texas corporation with its principal place of business at 250 Pennbright, Suite 150, Houston, TX 77090. “FSI” shall mean Farouk Systems, Inc. and all of its affiliates,

successors, officers, directors, agents, attorneys, and assigns, or other persons or entities acting on its behalf.

B. Respondent Dongguan Fumeikang is a corporation organized under the laws of the People's Republic of China, with its principal place of business at No.17 Building, Yinhu Industrial Area, Xiegang Town, Dongguan City, Guangdong Province China. "Dongguan Fumeikang" shall mean Dongguan Fumeikang Electrical Technology Co., Ltd. and all of its affiliates, successors, officers, owners, directors, managers, agents, and assigns, or other persons or entities acting on its behalf.

C. Both FSI and Dongguan Fumeikang are represented by counsel in this investigation and have received advice from counsel for purpose of the Consent Order Stipulation.

D. "CHI[®]" means the CHI[®] trademark covering electric hair curling irons in Class 9 in U.S. Trademark Registration No. 2,660,257 (issued December 10, 2002).

E. "Disputed Products" mean any hair irons and packaging thereof bearing the trademark CHI[®].

F. "Inventory" means inventory of Disputed Products in the United States.

G. Dongguan Fumeikang warrants and represents it does not have any Inventory.

H. FSI and Dongguan Fumeikang agree to the entry of a Consent Order.

I. The Commission has *in rem* jurisdiction over the subject hair irons which are the subject of the complaint in this Investigation and the Commission has *in personam* jurisdiction over Dongguan Fumeikang for purposes of this Stipulation and proposed Consent Order by virtue of Dongguan Fumeikang having appeared through counsel in this proceeding. Nothing in

this Stipulation or the proposed Consent Order shall be construed as meaning that Dongguan Fumeikang has submitted to the jurisdiction of any other court.

J. FSI and Dongguan Fumeikang expressly waive all right to seek judicial review or otherwise challenging or contesting the validity of this Consent Order.

K. Dongguan Fumeikang and FSI will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's rules of Practice and Procedure, 19 C.F.R. Part 210.

L. The enforcement, modification and revocation of the Consent Order will be carried out pursuant to subpart I of the Commission's Rules of Practice and Procedure, 19 C. F. R. Part 210.

M. Dongguan Fumeikang will not seek to challenge the validity of the CHI® trademark in any administrative or judicial proceeding to enforce the Consent Order.

N. The signing of this Consent Order Stipulation is for settlement purposes only and does not constitute an admission by Dongguan Fumeikang that an unfair act has been committed.

O. The Consent Order shall not grant nor be interpreted to grant any rights, authority or license to Dongguan Fumeikang to use the CHI® trademarks on any products or to make the Disputed Products without the express approval of FSI; all rights thereof and thereto being expressly reserved to FSI.

P. Dongguan Fumeikang agrees that it will not contest the legal conclusions or findings of fact determined by the Commission in any final determination in this Investigation.

Q. Dongguan Fumeikang agrees that it will not sell for importation into the United States, import into the United States, or sell after importation in the United States any Disputed Product, except under consent or license from FSI.

R. FSI and Dongguan Fumeikang agree to execute and file with the Commission a Joint Motion for Termination of the Investigation as to Dongguan Fumeikang Electrical Technology Co., Ltd. Based upon Entry of a Consent Order to request that the Investigation Number 337-TA-637 be terminated as to Dongguan Fumeikang.

S. The provisions of the Consent Order in Exhibit A shall become null and void if U.S. Trademark Registration No. 2,660,257 expires without renewal or is determined to be invalid or unenforceable by the Commission, a court or agency of competent jurisdiction in a final decision, provided that such the finding or judgment has become final and non-reviewable.

NOW, THEREFORE, the Commission issues the following Consent Order:

1. Upon entry of this Consent Order, Dongguan Fumeikang shall not sell for importation into the United States, import into the United States or sell in the United States after importation any Disputed Product, except under consent or license from FSI.

2. The provisions of this Consent Order shall become null and void if U.S. Trademark Registration No. 2,660,257 expires without renewal or is determined to be invalid or unenforceable by the Commission, a court or agency of competent jurisdiction in a final decision, provided that such the finding or judgment has become final and non-reviewable.

3. This Order does not constitute a finding that Dongguan Fumeikang has violated Section 337 of the Tariff Act of 1930, as amended.

4. This Investigation is hereby terminated with respect to Dongguan Fumeikang, Dongguan Fumeikang is hereby dismissed as a named respondent in this Investigation; provided,

however, that enforcement, modification, or revocation of this Consent Order shall be carried out pursuant to Subpart I of the commission's Rules of Practice and Procedure, 19. C.F.R. Part 210.

Dated: _____, 2008

BY ORDER OF THE COMMISSION

Marilyn R. Abbott
Secretary

CERTIFICATE OF SERVICE

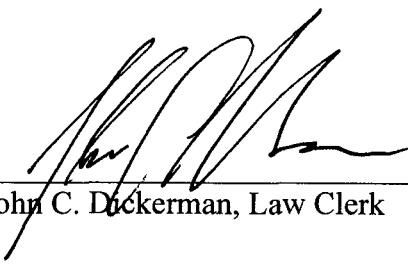
I hereby certify that copies of the foregoing document was served indicated to the parties listed below on this 8th day of May, 2008:

Secretary Marilyn R. Abbott
U.S. International Trade Commission
500 E Street, S.W., Room 112
Washington, D.C. 20436
(ORIGINAL AND SIX COPIES BY HAND DELIVERY)

The Honorable Carl C. Charneski
Administrative Law Judge
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John C. Dickerman, Law Clerk