

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

In the Matter of

CERTAIN FOAM MASKING TAPE

Inv. No. 337-TA-528

GENERAL EXCLUSION ORDER

The Commission has previously determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation and sale of certain foam masking tape that is covered by claims 1, 7, 8, 10, 11, 13, 14 and 16 of U.S. Patent No. 5,260,097 ("the '097 patent").

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is supported because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. 19 U.S.C. § 1337(d)(2). Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing foam masking tape.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. §§ 1337(d) and (f) do not preclude the issuance of the general exclusion order, and that the bond during the period of Presidential review shall be in the amount of 100 percent of the entered value of the articles in question.

Accordingly, the Commission hereby **ORDERS** that:

- a. Foam masking tape that is covered by claims 1, 7, 8, 10, 11, 13, 14 or 16 of the '097 patent is excluded from entry for consumption, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption for the remaining term of the '097 patent, except under license of the patent owner or as provided by law.
- b. Notwithstanding paragraph 1 of this Order, the aforesaid foam masking tape is entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption, under bond in the amount of 100 percent of the entered value of such articles, pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that he approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this action.
- c. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to foam masking tape imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
- d. The Commission may modify this Order in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).
- e. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and U.S. Customs and Border Protection.
- f. Notice of this Order shall be published in the *Federal Register* pursuant to section 337(j)(1)(A) of the Tariff Act of 1930 as amended (19 U.S.C. § 1337(j)(1)(A)) and section 210.49(b) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.49(b)).

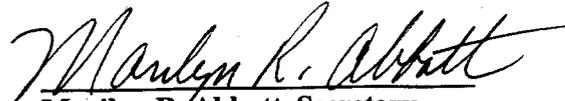
By order of the Commission.

Marilyn R. Abbott
Marilyn R. Abbott
Secretary to the Commission

Issued: October 31, 2005

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the **NOTICE OF ISSUANCE OF GENERAL EXCLUSION ORDER AND TERMINATION OF INVESTIGATION** were served upon the Commission Investigative Attorney Steven R. Pederson, Esq., and upon all parties via first class mail and air mail October 31, 2005.



**Marilyn R. Abbott, Secretary
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