

**Summary: *In the Matter of Certain Pocket Lighters***

1. Complainant BIC Corporation (“BIC”) respectfully requests that the United States International Trade Commission commence an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”), to remedy the unlawful importation into the United States, the sale for importation into the United States, and/or the sale within the United States after importation of certain pocket lighters that infringe the registered trademarks used and embodied in pocket lighters manufactured by BIC.

2. The proposed Respondents are Arrow Lighter, Inc. d/b/a MK Lighter, Inc. and MK Lighter Company (“MK”), Zhuoye Lighter Manufacturing Co. Ltd. (“Zhuoye”), Wellpine Company Limited (“Wellpine”), Benxi Fenghe Lighter Co., Ltd. (“Benxi”), Excel Wholesale Distributors Inc. (“Excel”), and Milan Import Export Company, LLC (“Milan”) (collectively, “Respondents”).

3. Respondents have engaged in unlawful acts, including the unlicensed importation into the United States, sale for importation into the United States, and sale after importation into the United States of certain pocket lighters.

4. BIC has made significant investments in bringing its iconic pocket lighter to market and cultivating goodwill amongst consumers in the United States through extensive advertising in various forms of media. For over 45 years, BIC’s pocket lighter has been a central part of American life and culture, and its distinctive look has become famous in the minds of the consuming public. Now, Respondents are attempting to free ride on BIC’s success by appropriating BIC’s distinctive registered trademarks.


5. BIC has manufactured the domestic article—the BIC® pocket lighter—in the United States for over 45 years in a facility in Connecticut. BIC also makes other qualifying domestic industry investments in other facilities located around the United States. BIC,

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therefore, maintains a domestic industry in pocket lighters that incorporate the trade dress, as discussed further below in Section VII. This Complaint seeks an investigation and remedies to protect BIC’s domestic industry from unfair trade practices by Respondents.

6. Respondents’ lighters infringe BIC’s distinctive source-identifying product configurations—collectively referred to hereinafter as the “Trade Dress.” These configurations incorporate the following trade dress, which is registered as of 1993 and 1999, respectively, and has incontestable status with the United States Patent and Trademark Office (“USPTO”):



- a. , Reg. No. 1,761,622, registered with the USPTO in connection with “cigarette lighters not made of precious metals,” with a date of first use at least as early as 1973.



- b. , Reg. No. 2,278,917, registered with the USPTO in connection with “cigarette lighters not made of precious metals,” with a date of first use at least as early as 1995.

As set forth in these registrations, BIC’s Trade Dress constitutes a lighter having:

- an oblong body which is elliptical in cross-section;
- a fork which is generally parabolic in cross-section; and

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- a hood (the metal portion at the top of the lighter) which is generally parabolic in cross-section.

7. BIC owns the entire right, title and interest in and to each of the registered trademarks.

8. Certified copies (and three additional copies) of the United States Trademark Registration Nos. 1,761,622 and 2,278,917 accompany this Complaint as Exhibits 1 and 2, respectively. Certified copies of the prosecution histories of these registrations also accompany this Complaint as Appendices 1 and 2, respectively.

9. Pursuant to Section 337(a)(2) and (3), an industry exists in the United States in connection with Complainant's pocket lighters incorporating the registered trademarks. This industry is supported by substantial investment by Complainant in the United States, including in plant, equipment, labor, capital, engineering, and research and development relating to manufacturing, distribution, quality assurance, and other activities with respect to the domestic articles.

10. Complainant requests that, after an investigation, the Commission (a) issue a general exclusion order pursuant to Section 337(d) prohibiting the entry into the United States of pocket lighters that infringe BIC's registered trademarks; (b) in the alternative, issue permanent limited exclusion orders pursuant to Section 337(d) of the Tariff Act of 1930, as amended, excluding from entry into the United States all pocket lighters that are manufactured, imported or sold for importation by or on behalf of Respondents and that infringe the Trade Dress; (c) issue cease and desist orders pursuant to Section 337(f) to preclude Respondents from offering for sale, marketing, advertising, demonstrating, warehousing, distributing, selling and/or using such imported products in the United States; and (d) require Respondents to post a bond that is set at a

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level sufficient to protect BIC from any injury during the sixty (60) day Presidential review period.