

\_\_\_\_\_ )  
 In the Matter of )  
 \_\_\_\_\_ )  
 CERTAIN POCKET )  
 LIGHTERS )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )

Investigation No. 337-TA-\_\_\_\_\_

Zhuoye Lighter Manufacturing Co, Ltd.  
No. 2, 3<sup>rd</sup>  
New Technological Industrial Zone  
Foshan City, Guangdong, China  
Tel: 86-757-27381727

## TABLE OF CONTENTS

Page

## **I. INTRODUCTION**

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 by the owner, importer, or consignee of certain pocket lighters that violate 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”), and Benxi Fenghe Lighter Co., Ltd. (“Benxi”) (collectively, “Proposed Respondents”).

3. Proposed 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 40 years, BIC’s 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, Proposed 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 40 years in facilities in Connecticut. BIC, therefore, maintains a domestic

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

6. Proposed Respondents' lighters infringe BIC's source-identifying product configurations—collectively referred to hereinafter as the "Trade Dress." These configurations include the following designs and trade dress, which are registered and have 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

- 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 Registrations No. 1,761,622 and No. 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 1-2, 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, and engineering relating to manufacturing, distribution, and quality assurance activities with respect to the domestic articles.

10. Complainant requests that, after an investigation, the Commission issue (a) a general exclusion order pursuant to Section 337(d) prohibiting the entry into the United States of Proposed Respondents' pocket lighters that infringe BIC's registered trademarks; and (b) cease and desist orders pursuant to Section 337(f) to preclude Proposed Respondents from offering for sale, marketing, advertising, demonstrating, warehousing, distributing, selling and/or using such imported products in the United States.

## **II. COMPLAINANT BIC CORPORATION**

11. BIC Corporation is a Connecticut corporation with its principal place of business at 1 BIC Way, Shelton, Connecticut 06864. BIC Corporation, through its subsidiary BIC Consumer Products Manufacturing Co., Inc., manufactures a wide variety of consumer products, including the pocket lighters that are a subject of this Complaint. Other products in the BIC

product lineup include: pens, razor blades, shavers, shaving systems, correction fluid and correction tape, and multi-purpose lighters. BIC Corporation sells these products in the United States through its subsidiary BIC USA Inc. BIC has a significant number of employees working in the United States in connection with pocket lighters incorporating the Trade Dress. As described more fully below, BIC employees are engaged in manufacturing, distributing, and pre- and post-sale product quality assurance work with respect to pocket lighters incorporating the Trade Dress.

12. BIC's pocket lighters incorporating its Trade Dress are iconic and famous in the minds of the consuming public in the United States. The iconic status of BIC's Trade Dress is confirmed by the display of the domestic articles in museums, including the Museum of Modern Art ("MoMA"), as examples of iconic designs of the 20th century. Since February 2005, MoMA's Department of Architecture and Design—the world's first curatorial department devoted to architecture and design—has featured BIC's lighters incorporating its famous Trade Dress in its collection. From December 23, 2009 to July 24, 2010, MoMA featured BIC's lighter incorporating the iconic BIC Trade Dress in its "Shaping Modernity: Design 1880-1980" exhibition. According to MoMA, the exhibition's purpose was to highlight "a selection of visionary objects, graphics, architectural fragments, and textiles from the Museum's collection that reveal the attempts of successive generations to shape their experience of living in the modern world." BIC lighters were chosen precisely because their famous Trade Dress has been a distinctive part of modern life for over 40 years.

13. To maintain its position and status in the industry, BIC has made significant investments in the design, development, engineering and manufacture of its pocket lighters. BIC's consistent innovation, supported by its extensive trade dress and trademark portfolio, has

been important to the existence and growth of its domestic industry, remains important to its continued success and provides BIC with a competitive advantage.

### **III. PROPOSED RESPONDENTS**

#### **A. Benxi**

14. Upon information and belief, Benxi is a Chinese company, having a principal place of business at Wolong Town, Mingshan District, Benxi, Liaoning Province, China. Benxi, upon information and belief, manufactures and imports infringing pocket lighters, including under the “Star” brand name, into the United States and sells them in the United States, or sells them outside of the United States for importation into the United States.

#### **B. MK, Zhuoye, and Wellpine**

15. Upon information and belief, MK is a California corporation, having a principal place of business at 13942 E. Valley Blvd., City of Industry, CA 91746. MK, upon information and belief, imports infringing pocket lighters into the United States and sells them in the United States, or sells them outside of the United States for importation into the United States.

16. Upon information and belief, Zhuoye is a Chinese company, having a principal place of business at No. 2 3rd, New Technological Industrial Zone, Xingtian Town, Shunde District, Foshan City, Guangdong, China. Zhuoye, upon information and belief, manufactures and imports infringing pocket lighters into the United States and sells them in the United States, or sells them outside of the United States for importation into the United States. Zhuoye’s manufacturing facilities for pocket lighters are all, upon information and belief, outside of the United States. Upon information and belief, those facilities are located in China.

17. Upon information and belief, Wellpine is a Hong Kong company, having a principal place of business at Unit 701, Grand City Plaza, No. 1-17 Sai Lau Kok Road, Tsuen Wan, N.T., Hong Kong. Wellpine, upon information and belief, imports infringing pocket

lighters into the United States and sells them in the United States, or sells them outside of the United States for importation into the United States.

18. Upon information and belief, Zhuoye and a predecessor of MK known as Zhuoye Lighter (USA) were named as defendants in litigation in the United States alleging that the unsafe nature of their lighters caused the death of an individual in the state of Texas. Upon information and belief, Zhuoye never appeared in that litigation, and MK's predecessor company in the United States—Zhuoye Lighter (USA)—paid a settlement and subsequently went defunct, at which point Proposed Respondent MK was incorporated. *See* Exhibit 5.

19. MK, Zhuoye, and Wellpine, upon information and belief, are now manufacturing, importing, and/or distributing lighters with similarly unsafe features including, but not limited to, having an easily removable hood and a flame height that is irregular, which can be dangerous for use by the consuming public. MK, Zhuoye, and Wellpine's actions thus, upon information and belief, present significant public health and safety concerns.

#### **IV. THE TRADE DRESS AT ISSUE**

20. In developing its pocket lighters, BIC designed and created an original and distinctive look for the lighter's overall appearance. This distinctive look first appeared in the marketplace in 1973.

21. The registered Trade Dress for BIC's pocket lighters has several key features that, when taken alone, or in combination, distinguish them from all other commercially available lighters:

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



22. BIC's famous product configuration also incorporates:

- a solid colored opaque body;
- a silver metal hood;
- a red pusher;
- branding on the silver metal hood; and
- branding directly beneath the metal hood and red pusher.

23. A photograph of BIC®'s pocket lighters incorporating the Trade Dress is shown below. A physical sample of the BIC® pocket lighter is submitted as Exhibit 3.



**BIC® Pocket Lighters Incorporating the Trade Dress**

24. In continuous and substantially exclusive use for over 40 years, as well as being the subject of the expenditure of tens of millions of dollars in promotion and advertising in various media in the United States, the Trade Dress is recognized as an indicator of source for BIC's high-quality and pioneering lighters and are the embodiments of the substantial and valuable goodwill associated with BIC's products.

25. As a result of BIC's substantial efforts, and prior to the acts of Proposed Respondents alleged herein, the Trade Dress has become famous in the minds of consumers as designations of source for BIC's goods.

26. The distinctive Trade Dress does not serve any function other than to identify BIC as the source of its pocket lighters. The configuration of the lighters is purely aesthetic, and is not optimal in terms of engineering, economy of manufacture, or accommodation of utilitarian function. There are many non-infringing, non-dilutive designs available for others to use, so no competitor has a legitimate need to use the Trade Dress in order to manufacture and sell a pocket lighter. Indeed, several other manufacturers of pocket lighters compete successfully in the pocket lighter market without copying the unique product configuration of BIC® pocket lighters.

27. The Trade Dress has been registered and now has incontestable status with the USPTO, as set forth below:



- 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.

28. Pursuant to Commission Rule 210.12, the original of the Complaint is accompanied by: (1) a certified copy of United States Trademark Reg. No. 1,761,622 and three additional copies (Exhibit 1); (2) one certified copy of the prosecution history of United States

Trademark Reg. No. 1,761,622 (Appendix 1); (3) a certified copy of United States Trademark Reg. No. 2,278,917 and three additional copies (Exhibit 2); (4) one certified copy of the prosecution history of United States Trademark Reg. No. 2,278,917 (Appendix 2).

**V. UNFAIR ACTS OF PROPOSED RESPONDENTS – TRADE DRESS INFRINGEMENT AND IMPORTATION**

**A. PROPOSED RESPONDENTS’ PRODUCTS**

**1. Benxi**

29. On information and belief, Benxi imports into the United States, sells for importation into the United States, and/or sells after importation into the United States pocket lighters that infringe BIC’s registered trademarks (“the Accused Products”). A true and correct copy of the Benxi webpage featuring these lighters is attached as Exhibit 3.

30. Pursuant to Commission Rule 210.12(b), the original of this Complaint is accompanied by representative samples of Benxi’s Accused Products (Exhibit 4) that Complainant obtained in the United States.

**2. MK, Zhuoye, and Wellpine**

31. On information and belief, MK, Zhuoye, and Wellpine import into the United States, sell for importation into the United States, and/or sell after importation into the United States pocket lighters that infringe BIC’s registered trademarks (“the Accused Products”). A true and correct copy of the MK webpage featuring these lighters is attached as Exhibit 5.

32. Pursuant to Commission Rule 210.12(b), the original of this Complaint is accompanied by representative samples of MK, Zhuoye, and Wellpine’s Accused Products (Exhibit 6) that Complainant obtained in the United States.

## **B. EVIDENCE OF IMPORTATION**

### **1. Benxi**

33. Evidence of the unfair importation of the Accused Products is evident from the lighters themselves, which indicate on their label that they are made in China. *See* Exhibit [REDACTED].

34. Further, on information and belief, Benxi manufactures the Accused Products in China.

35. On information and belief, the Accused Products are sold for importation into the United States by Benxi. Importation records evidencing the sale for importation by Benxi are attached as Exhibit [REDACTED].

### **2. MK, Zhuoye, and Wellpine**

36. Evidence of the unfair importation of the Accused Products is evident from the lighters themselves, which indicate on their label that they are made in China. *See* Exhibit [REDACTED].

37. Further, on information and belief, Zhuoye manufactures the Accused Products in China.

38. On information and belief, the Accused Products are imported into the United States by MK. Importation records evidencing the importation by MK are attached as Exhibit [REDACTED].

## **C. INFRINGEMENT OF THE TRADE DRESS**

39. As a leader in the field of pocket lighters, BIC and its products are associated with high quality and reliability, and others have sought, and still seek, to emulate the BIC® pocket lighter. Proposed Respondents have copied BIC's registered trademarks blatantly and deliberately, and use the Trade Dress to trade on BIC's goodwill and to compete unfairly with BIC.

## 1. Benxi

40. As demonstrated below, Benxi's Accused Products include designs that are nearly identical to BIC's registered trademarks and are, therefore, confusingly similar.<sup>1</sup>



**Benxi's Lighters**

41. As can be seen above, Benxi's Accused Products infringe BIC's registered trademarks and are confusingly similar in appearance. The Accused Products, like the Trade Dress, have:

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

42. To further enhance the confusing similarity with BIC's pocket lighters, the Accused Products also feature the following elements of BIC's product configuration:

---

<sup>1</sup> All examples are exemplary in nature and not intended to restrict the scope of discovery or any exclusion order or other remedy the Commission may order.

- a solid colored opaque body;
- a silver metal hood;
- a red pusher; and
- branding on the silver metal hood.

43. As demonstrated below, MK, Zhuoye, and Wellpine’s Accused Products include designs that are nearly identical to BIC’s registered trademarks and are, therefore, confusingly similar.



#### **MK, Zhuoye, and Wellpine’s “Grip Series” Lighter**

44. MK, Zhuoye, and Wellpine are also marketing a miniature version of their “grip Series” lighter—the “mini-grip Series”—which is substantially indistinguishable from BIC’s registered lighter configuration Trade Dress as embodied in the lighters currently sold and distributed by BIC. A photograph is below:



### **MK, Zhuoye, and Wellpine’s “Mini-Grip Series” Lighter**

45. Further, upon information and belief, MK, Zhuoye, and Wellpine are marketing and intend to sell another, even more blatant knock-off incorporating BIC’s Trade Dress. MK, Zhuoye, and Wellpine, upon information and belief, are marketing lighters incorporating BIC’s Trade Dress on Proposed Respondent MK’s website. MK, Zhuoye, and Wellpine market these lighters as the “MK dura-lite Series,” and describe them as “Classic Disposable Lighters” having a “Classic design.” A true and correct copy of the MK webpage featuring this lighter is attached as Exhibit [REDACTED]. A photograph of the MK dura-lite Series lighter MK, Zhuoye, and Wellpine market and intend to sell is below:



### **MK, Zhuoye, and Wellpine’s “Classic Design” Lighters**

46. As can be seen above, MK, Zhuoye, and Wellpine's Accused Products infringe BIC's registered trademarks and are confusingly similar in appearance. The Accused Products, like the Trade Dress, have:

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

47. To further enhance the confusing similarity with BIC's pocket lighters, the Accused Products also feature the following elements of BIC's product configuration:

- a solid colored opaque body;
- a silver metal hood;
- a red pusher;
- branding on the silver metal hood; and
- branding directly beneath the metal hood and red pusher.

48. Further enhancing the confusing similarity with BIC's pocket lighters, MK distributes to customers a Material Safety Data Sheet that, upon information and belief, copies the information from BIC's Material Safety Data Sheet. *See* the Declaration of Jeffry P. Kupson ("Kupson Decl.") attached as Exhibit  .

49. Proposed Respondents sell the Accused Products in the same channels of trade as BIC® pocket lighters, primarily at convenience stores, service stations, and/or online.

50. In light of the fact that BIC® pocket lighters have been sold for over forty years and have gained widespread recognition and praise, upon information and belief, Proposed Respondents deliberately copied the Trade Dress. The Accused Products are sold to the same customers through the same or similar channels of trade as those used by BIC, but at a much



lower price than genuine BIC® pocket lighters. *See* Kupson Decl. [REDACTED]. Because of the similarity in appearance between BIC® pocket lighters and the Accused Products and the strong likelihood of confusion, even the price difference is insufficient to foreclose the likelihood of confusion. Indeed, the fact that the infringing lighters with confusingly similar appearance are offered at lower price points than BIC® pocket lighters contributes to the substantial injury to BIC's brand equity, reputation and domestic industry.

51. Moreover, consumers of pocket lighters like those at issue here are not likely to exercise great care in resolving potential confusion in their initial product interest at the point of purchase or in post-sale exposure. Even more sophisticated consumers are likely to experience confusion regarding the source, affiliation, sponsorship, or association of Proposed Respondents' infringing products when confronted with promotions and sales of the infringing Accused Products.

52. Further, in the post-sale context the likelihood of confusion is even greater. Where actual or potential consumers of pocket lighters may see Proposed Respondents' infringing products only briefly during use, consumers are especially likely to mistake the source, affiliation, or sponsorship of Proposed Respondents' Accused Products incorporating the Trade Dress, or to associate the Accused Products with the Trade Dress.

53. Proposed Respondents are not authorized, licensed, or otherwise permitted to use the Trade Dress, and are using the Trade Dress in bad faith. Proposed Respondents' intent to create associations with BIC and to free ride on BIC's goodwill is evident based on the close similarities between the Accused Products on the one hand, and the Trade Dress on the other.

54. These willful and intentional acts have threatened and caused, and will continue to threaten and cause, consumer confusion and substantial injury to BIC's domestic industry.

Eliminating such consumer confusion is in the public interest.

## **VI. HARMONIZED TARIFF SCHEDULE INFORMATION**

55. The accused products are believed to fall within the following classifications of the Harmonized Tariff Schedules (HTS) of the United States: 9613 and 9613.10.00. These HTS numbers are illustrative only and are not exhaustive of the products accused of infringement in this Complaint. These HTS numbers are not intended to limit the scope of the Investigation.

## **VII. THE DOMESTIC INDUSTRY**

56. A domestic industry, as defined by 19 U.S.C. § 1337 (a)(3), exists as a result of conduct by Complainant in the United States that exploits the Trade Dress and that relates to products that incorporate the Trade Dress. BIC is in the process of further establishing and expanding that domestic industry, including by seeking relief from and overcoming the unfair trade practices identified in this Complaint.

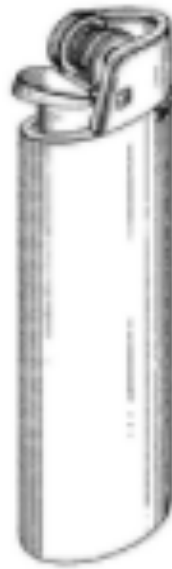
57. Within the United States, BIC has made and maintains significant investments in plant and equipment, significant employment of labor and capital, and substantial investments in the exploitation of the Trade Dress through manufacture, distribution, and quality assurance of the domestic article. All of the pocket lighters that have been supported by BIC's significant and substantial investments in the United States, as described herein, incorporate the Trade Dress.

### **A. TECHNICAL PRONG**

58. BIC's pocket lighters are manufactured by BIC in the United States and incorporate the Trade Dress. The following photographs demonstrate how BIC's pocket lighters incorporate the Trade Dress:



**BIC's Pocket Lighters**



**BIC's Registered Trademarks**

## **B. ECONOMIC PRONG**

### **1. Significant investment in plant and equipment**

59. A domestic industry exists in the United States by virtue of Complainant's significant investments in plant and equipment devoted manufacturing, distribution, and quality assurance of pocket lighters that incorporate the Trade Dress.

60. BIC has facilities in the United States for manufacturing, distribution, and quality assurance for pocket lighters that incorporate the Trade Dress. Included among these facilities is a factory in Milford, Connecticut, that is owned by BIC and fully committed to the manufacture of the domestic article. The Declaration of Carl M. Vensel attached as Exhibit    summarizes further information concerning these facilities.

### **2. Significant employment of labor and capital**

61. BIC, through its subsidiaries BIC USA Inc. and BIC Consumer Products Manufacturing Co., Inc., employs in the United States a significant number of persons involved

in manufacture, distribution, and quality assurance of pocket lighters that incorporate the Trade Dress. These employees include full-time employees dedicated to the manufacture, distribution and quality assurance regarding pocket lighters that incorporate the Trade Dress. The Declaration of Carl M. Vensel attached as Exhibit [REDACTED] summarizes information concerning these employees.

**3. Substantial investment in exploiting the Trade Dress through engineering**

62. Complainant has made and will continue to make, substantial investments in the United States in the exploitation of the asserted Trade Dress directed to engineering activities, such as advanced automated manufacturing, quality assurance, warehousing, and distribution related pocket lighters that incorporate the Trade Dress. The Declaration of Carl M. Vensel attached as Exhibit [REDACTED] summarizes additional information concerning these expenditures.

**VIII. LICENSES**

63. Pursuant to Commission Rule 210.12(a)(10), BIC Corporation's wholly owned subsidiary BIC USA Inc. is the sole and exclusive licensee of the Trade Dress in the United States.

**IX. RELATED LITIGATION**

64. BIC has enforced its rights in its registered trademarks against numerous infringers, including in various district courts across the country. Contemporaneously with its filing of the present Complaint, BIC will be filing a parallel district court action in the United States District Court for the Southern District of New York against each of the Proposed Respondents alleging trademark infringement, false designation of origin, unfair competition, and trademark dilution based on the Trade Dress.

65. On September 20, 2000, BIC filed an action in the United States District Court for the Southern District of New York against Vaid Enterprises, Inc. and J&J USA Corp., alleging trademark infringement, trademark dilution, false designation of origin, and related state law claims based on BIC's rights in the Trade Dress. The case was captioned *BIC Corporation v. Vaid Enterprises, Inc.*, No. 00-cv-07117. On December 20, 2001, the court entered a consent judgment and a permanent injunction against J&J USA Corp. On January 23, 2002, the court entered a consent judgment and permanent injunction against Vaid Enterprises, Inc.

66. On November 13, 2000, BIC filed an action in the United States District Court for the Southern District of California against defendants Sara Export Import, Inc., Saad Abouni d/b/a Varley's Mkt & Deli, and Yousif Abouni d/b/a Varley's Mkt & Deli, alleging trademark infringement, trademark dilution, false designation of origin, and related state law claims based in BIC's rights in the Trade Dress. The case was captioned *BIC Corporation v. Sara Export Import, Inc.*, No. 00-cv-02271. On December 20, 2001, the court entered a consent judgment and a permanent injunction against the defendants and awarded BIC damages.

67. On November 13, 2000, BIC filed an action in the United States District Court for the Eastern District of Texas against Starco Impex Inc., alleging trademark infringement, trademark dilution, false designation of origin, and related state law claims based in BIC's rights in the Trade Dress. The case was captioned *BIC Corporation v. Starco Impex Inc.*, No. 00-cv-00774. On March 28, 2001, the parties settled their claims and the case was dismissed.

68. On June 20, 2006, BIC filed an action in the United States District Court for the Eastern District of Michigan against defendants Capital Sales Company, Sam Haddad d/b/a Capital Sales Company, Nader Enterprises, Inc., J&D Enterprises, Inc., Rami Nader, Fadi Zahern (collectively, the "Capital Sales Defendants"), Huangqiu Lighters Manufacturing Co., Ltd.,

Asiapac Development Co., Ltd., and Asiapac Group (collectively, the “Huangqiu Defendants”), alleging trademark infringement, trademark dilution, false designation of origin, and related state law claims based in BIC’s rights in the Trade Dress. The case was captioned *BIC Corporation v. Capital Sales Co.*, No. 06-cv-10267. On October 10, 2007, the court entered final judgment and a permanent injunction against the Capital Sales Defendants. On January 30, 2008, the court entered final judgment against the Huangqiu Defendants and ordered damages awarded to BIC.

69. On January 3, 2018, BIC filed an action in the United States District Court for the Southern District of Florida against defendants Florida Distributors, Inc., Yahya Trading Corp., and Transworld International Trading Corp. alleging trademark infringement, trademark dilution, false designation of origin, and related state law claims based in BIC’s rights in the Trade Dress. The case is captioned *BIC Corporation v. Florida Distributors, Inc.*, NO. 18-cv-60010. On January 29, 2018, the Court entered a preliminary injunction against Florida Distributors, Inc. On February 26, 2018, the Court entered a preliminary injunction against Yahya Trading Corp. The case is still pending.

## **IX. GENERAL EXCLUSION ORDER**

70. Should the Commission find a violation of Section 337, a general exclusion order directed to certain pocket lighters that infringe BIC’s Trade Dress is necessary and appropriate to prevent circumvention of a limited exclusion order directed to Proposed Respondents and/or to remedy a pattern of violation of Section 337.

71. Upon information and belief, many foreign manufacturers of products such as the Accused Products do business under multiple names and through different subsidiaries, import such products into the United States through many different importers, and have shown the ability to quickly change the manufacturer’s name and corporate form.

72. Upon information and belief, and as previously discussed, Zhuoye and a predecessor of MK have already been involved in litigation regarding the unsafe nature of their lighters. As a result of that litigation, upon information and belief, Zhuoye and MK took advantage of changes in corporate form to continue business in the United States. It is likely that should the Commission issue a limited exclusion order, the infringing activities would continue by the same entities under a different corporate form.

#### **X. RELIEF REQUESTED**

WHEREFORE, by reason of the foregoing, Complainant respectfully request that the United States International Trade Commission:

a. Institute an immediate investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to violations of that section based upon the unlawful importation into the United States, the sale for importation and/or the sale within the United States after importation by Proposed Respondents of pocket lighters that infringe the Trade Dress;

b. Schedule and conduct a hearing on said unlawful acts and, following said hearing:

c. Issue a general exclusion order forbidding entry into the United States of all pocket lighters that infringe BIC's Trade Dress; alternatively, issue a permanent exclusion order 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 Proposed Respondents and that infringe the Trade Dress.

d. Issue permanent cease and desist orders pursuant to Section 337(f) of the Tariff Act of 1930, as amended, directing Proposed Respondents to cease and desist from marketing, advertising, demonstrating, sampling, warehousing inventory for distribution,

offering for sale, selling, promoting, distributing, licensing, or using any pocket lighters that infringe BIC's Trade Dress; and

e. Grant such other and further relief as the Commission deems just and proper under the law, based on the facts determined by the investigation and the authority of the Commission.

Dated: December 7, 2018

Respectfully submitted,

/s/

---

Peter D. Vogl  
Christopher J. Cariello  
Briggs M Wright  
ORRICK, HERRINGTON & SUTCLIFFE, LLP  
51 West 52<sup>nd</sup> Street  
New York, NY 10019  
Telephone: 212-506-5000  
Facsimile: 212-506-5151

Jordan L. Coyle  
ORRICK, HERRINGTON & SUTCLIFFE, LLP  
1152 15<sup>th</sup> Street, NW  
Washington, D.C. 20005  
Telephone: 202-339-8400  
Facsimile: 202-339-8500

*Counsel for BIC Corporation*



### **VERIFICATION OF COMPLAINT**

I, [REDACTED], declare, in accordance with 19 C.F.R. §§ 201.8, 210.4 and 210.12(a), under penalty of perjury, that the following statements are true:

1. I am [REDACTED] of Complainant BIC Corporation and am duly authorized to sign this Complaint on behalf of Complainant;
2. I have read the foregoing Complaint;
3. To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the foregoing Complaint is well-founded in fact and is warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
4. The allegations and other factual contentions have evidentiary support or, as specifically identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
5. The foregoing Complaint is not being submitted for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the investigation.

Executed at Shelton, CT on \_\_\_\_\_, 2018.

\_\_\_\_\_

***IN THE MATTER OF CERTAIN POCKET LIGHTERS***

**Investigation No. 337-TA-\_\_\_\_**

**EXHIBITS TO COMPLAINT**

<b>EXHIBIT NO.</b>	<b>EXHIBIT TITLE</b>	<b>PUBLIC OR CONFIDENTIAL</b>
1	Certified copy (and three additional copies) of United States Trademark Reg. No. 1,761,622	Public
2	Certified copy (and three additional copies) of United States Trademark Reg. No. 2,278,917	Public
3	Representative sample of BIC® pocket lighter	Public
4	Representative sample of Accused Products	Public
5	MK Website	Public
6	News articles regarding previous litigation against Proposed Respondents	Public
7	Declaration of Jeffry P. Kupson	Public
8	Declaration of Carl M. Vensel	Confidential

**APPENDICES TO COMPLAINT**

<b>APPENDIX NO.</b>	<b>APPENDIX TITLE</b>	<b>PUBLIC OR CONFIDENTIAL</b>
1	One certified copy of the prosecution history of United States Trademark Reg. No. 1,761,622	Public
2	One certified copy of the prosecution history of United States Trademark Reg. No. 2,278,917	Public