

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN LIGHTING CONTROL
DEVICES INCLUDING DIMMER
SWITCHES AND PARTS THEREOF

Inv. No. 337-TA-681

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**ORDER NO. 8: INITIAL DETERMINATION GRANTING JOINT MOTION TO
TERMINATE INVESTIGATION AS TO RESPONDENT NEPTUN
LIGHT, INC. BASED UPON A CONSENT ORDER**

(September 10, 2009)

On August 31, 2009, complainant Lutron Electronics Co., Inc. (“Lutron”) and respondent Neptun Lights, Inc. (“Neptun”) jointly moved to terminate the investigation based on a Consent Order. (Motion Docket No. 681-003.) On September 9, 2009, the Commission Investigative Staff (“Staff”) filed a response in support of the motion.

In accordance with Commission Rule 210.21(c), Neptun entered into a “Consent Order Stipulation” and a “Proposed Consent Order,” both attached hereto as Exhibits A and B, respectively. Commission Rule 210.21(c)(3) sets forth certain requirements for the contents of a consent order stipulation. 19 CFR § 210.21(c)(3). I find that the Consent Order Stipulation submitted by Neptun complies with the requirements of Commission Rule 210.21(c)(3).

Specifically, Neptun agrees that upon entry of the Consent Order, Neptun shall not, *inter alia*, sell for importation, import into the United States, make, use, offer for sale, sell in the United States after importation certain lighting control devices, including dimmer switches, and parts thereof that infringe any of claims 36, 38, 47, 58, 65, 67, 76, 87, 94, 96, 105, 116, 178, 180,

189, and 197 of U.S. Patent No. 5,637,930 (“the ‘930 patent”) except under consent or license from Lutron, its successors or assignees. (Proposed Consent Order at ¶ 1 and Consent Order Stipulation at ¶ 1.) Neptun agrees, pursuant to Commission Rule 210.21(c)(3)(i)(A):

- (1) to an admission of the Commission’s *in rem, in personam*, and subject matter jurisdiction (Consent Order Stipulation at ¶ 2),
- (2) to an express waiver by Neptun of all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order (Consent Order Stipulation at ¶ 3),
- (3) to cooperate with and not seek to impede by litigation or other means the Commission’s efforts to gather information under subpart I of part 210 of Title 19 of the Code of Federal Regulations (Consent Order Stipulation at ¶ 4), and
- (4) that the enforcement, modification, and revocation of the Consent Order will be carried out pursuant to subpart I of part 210 of Title 19 of the Code of Federal Regulations, incorporating by reference the Commission’s Rules of Practice and Procedure (Consent Order Stipulation at ¶ 5).

Because this is an intellectual property-based investigation, the Consent Order Stipulation also contains a statement, pursuant to Commission Rule 210.21(c)(3)(i)(B), that:

- (1) the Consent Order shall not apply with respect to any claim of an 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 non-reviewable (Consent Order Stipulation at ¶ 6), and

- (2) Neptun will not seek to challenge the validity of the '930 patent in any administrative or judicial proceeding to enforce the Consent Order (Consent Order Stipulation at ¶ 7).

Commission Rule 210.50(b)(2) provides that in the case of a proposed termination by settlement agreement or consent order, 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. 19 CFR § 210.50(b)(2). In any initial determination terminating an investigation by settlement agreement or consent order, the administrative law judge is directed to consider and make appropriate findings regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers. *Id.*

In their moving papers, the parties assert that “Commission policy, public interest and administrative economy favor granting this motion.” (Mem. at 1-2.) Staff states that it is not aware of any information that would indicate that the termination of the investigation as to Neptun on the basis of a consent order is contrary to the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers. (Staff Resp. at 4.)

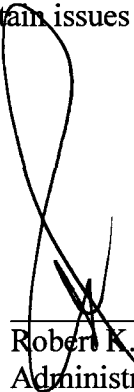
Upon review of the pleadings filed in connection with the motion to terminate the investigation, I am not aware of any information indicating that termination of this investigation on the basis of the settlement agreement is contrary to the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. In addition, the termination of the investigation as to Neptun,

such as that proposed by the motion, is generally in the public interest, which favors settlement to avoid needless litigation and to conserve public resources. Therefore, I find that termination of this investigation is in the public interest and does not impose any undue burdens on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers.

Accordingly, it is my Initial Determination that the joint motion to terminate this investigation as to Neptun on the basis of a consent order is GRANTED. Because Neptun is the sole respondent in this investigation, the investigation is hereby terminated in its entirety. This Initial Determination, along with supporting documentation, is hereby certified to the Commission.

Pursuant to 19 CFR§ 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 CFR § 210.43(a), or the Commission, pursuant to 19 CFR § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues herein.

SO ORDERED.



Robert K. Rogers, Jr.
Administrative Law Judge

Exhibit A

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before The Honorable Robert K. Rogers, Jr.

IN THE MATTER OF
CERTAIN LIGHTING CONTROL DEVICES
INCLUDING DIMMER SWITCHES AND
PARTS THEREOF

Investigation No. 337-TA-681

**CONSENT ORDER STIPULATION
BY RESPONDENT NEPTUN LIGHT, INC.**

WHEREAS, the U.S. International Trade Commission ("Commission" or "ITC") on July 24, 2009 (74 Fed. Reg. 36744), instituted this 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 Lutron Electronics Co., Inc. ("Lutron"), which allege violations of Section 337 in the importation into the United States, the sale for importation and the sale within the United States after importation of certain lighting control devices, including dimmer switches, and parts thereof by Respondent Neptun Light, Inc.. ("Respondent" or "Neptun") that are alleged to infringe claims 36, 38, 47, 58, 65, 67, 76, 87, 94, 96, 105, 116, 178, 180, 189 and 197 of Complainant's United States Patent No. 5,637,930 ("the '930 patent");

WHEREAS, Neptun is willing to accept entry of the Consent Order submitted concurrently herewith by the Commission and agrees to all waivers and other provisions as required by 19 C.F.R. § 210.21; and

WHEREAS, Neptun agrees to all terms set forth in the Consent Order.

IT IS HEREBY STIPULATED by Neptun as follows:

1. Upon entry of this Consent Order, Neptun shall not sell for importation, import into the United States or sell in the United States after importation, or knowingly aid, abet, encourage, participate in, or induce the sale for importation, importation into the United States or sale in the United States after importation of certain lighting control devices, including dimmer switches, and parts thereof that infringe any of claims 36, 38, 47, 58, 65, 67, 76, 87, 94, 96, 105, 116, 178, 180, 189 and 197 of the '930 patent except under consent or license from Complainants, its successors or assignees.

2. The Commission has *in rem* jurisdiction over the accused lighting control devices, including dimmer switches, and parts thereof that are the subject of the complaint in this Investigation, the Commission has *in personam* jurisdiction over Neptun for purposes of this Stipulation and proposed Consent Order, and the Commission has subject matter jurisdiction in this Investigation.

3. Neptun expressly waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order.

4. Neptun 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.

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


6. The Consent Order shall not apply with respect to any claim of an 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.

7. Neptun will not seek to challenge the validity of the '930 patent in any administrative or judicial proceeding to enforce the Consent Order.

IT IS SO STIPULATED.

Date: 8/28/2009



Neptun Light, Inc.

LUTRON700509-3

Exhibit B

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

Before The Honorable Robert K. Rogers, Jr.

IN THE MATTER OF CERTAIN LIGHTING CONTROL DEVICES INCLUDING DIMMER SWITCHES AND PARTS THEREOF
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Investigation No. 337-TA-681

[PROPOSED] CONSENT ORDER

The U.S. International Trade Commission ("Commission" or "ITC") on July 24, 2009 (74 Fed. Reg. 36744), 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 Lutron Electronics Co., Inc. ("Complainant" or "Lutron"), 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 lighting control devices, including dimmer switches, and parts thereof by Respondent Neptun Light, Inc.. ("Respondent" or "Neptun") that are alleged to infringe claims 36, 38, 47, 58, 65, 67, 76, 87, 94, 96, 105, 116, 178, 180, 189 and 197 of Complainant's United States Patent No. 5,637,930 ("the '930 patent").

Neptun has executed a Consent Order Stipulation in which it agrees to the entry of this Consent Order and to all waivers and other provisions as required by Commission Rule of Practice and Procedure 210.21(c) (19 C.F.R. § 210.21(c)). Neptun has filed a Motion for Termination of the Investigation based upon a Consent Order.

IT IS HEREBY ORDERED THAT:

1. Upon entry of this Consent Order, Neptun shall not sell for importation, import into the United States or sell in the United States after importation, or knowingly

aid, abet, encourage, participate in, or induce the sale for importation, importation into the United States or sale in the United States after importation of certain lighting control devices, including dimmer switches, and parts thereof that infringe any of 36, 38, 47, 58, 65, 67, 76, 87, 94, 96, 105, 116, 178, 180, 189 and 197 of Complainant's United States Patent No. 5,637,930 ("the '930 patent") except under consent or license from Complainants, its successors or assignees.

2. This Consent Order shall be applicable to and binding upon Neptun, its officers, directors, agents, servants, employees, and all persons, firms, successors, assigns, or corporations acting or claiming to act on behalf of Neptun or under the direction or authority of Neptun.
3. Neptun waives all rights to seek judicial review or otherwise challenge or contest the validity of this Consent Order.
4. Neptun shall cooperate with and shall 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.
5. Neptun shall not seek to challenge the validity of the asserted claims of the '930 patent in any administrative or judicial proceeding to enforce the Consent Order.
6. If any claim of the '930 patent is held invalid, or unenforceable by a court or agency of competent jurisdiction, in a final decision, no longer subject to appeal, this order shall become null and void as to any such invalid or unenforceable claims.
7. This Investigation is hereby terminated with respect to Neptun. Neptun 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 19 C.F.R. § 210.76 of the Commission's Rules of Practice and Procedure. In determining whether Neptun is in violation of this Consent Order, the Commission may infer facts adverse to Neptun if Neptun fails to provide adequate or timely information. The Commission may impose a penalty as provided in 19 U.S.C. § 1337. The Commission's assessment of any such penalty shall have the force of a judgment and liability for payment of such penalty shall accrue upon administrative assessment by the Commission.

BY ORDER OF THE COMMISSION

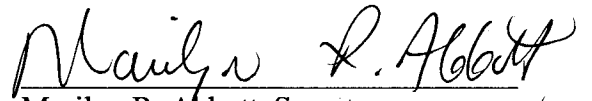
LUTRON700609-3

**IN THE MATTER OF CERTAIN LIGHTING
CONTROL DEVICES INCLUDING DIMMER
SWITCHES AND PARTS THEREOF**

Inv. No. 337-TA-681

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** was served upon Commission Investigative Attorney, **Benjamin Levi, Esq.**, and the following parties via first class mail and air mail where necessary on **SEP 10 2009**


Marilyn R. Abbott, Secretary *JN 6*
U.S. International Trade Commission
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Washington, D.C. 20436

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**IN THE MATTER OF CERTAIN LIGHTING
CONTROL DEVICES INCLUDING DIMMER
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PUBLIC CERTIFICATE OF SERVICE - PAGE 2

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