

## ITC Probes Canadian Cos. Over Lamp Design Patent

By **Martin Bricketto**

Law360, New York (September 22, 2010) -- The U.S. International Trade Commission is moving forward with an investigation into accusations that Canadian companies are importing ornamental wind- and solar-powered light posts that infringe a design patent.

The ITC announced Wednesday it will be conducting the probe based on a complaint in August by Duggal Dimensions LLC and affiliated companies alleging violations of Section 337 of the Tariff Act of 1930.

The commission named Canada's Gus Power Inc., EfstonScience Inc. and The StressCrete Group, along with StressCrete's U.S. subsidiary King Luminaire Inc. as respondents in the investigation.

The ornamental street lamps and light posts at the center of the dispute rely on wind and solar energy to charge a battery that powers a panel of light-emitting diodes.

Duggal's complaint alleged that the companies harmed the domestic industry it had established by unlawfully importing into the U.S. street lamps that infringe U.S. Patent Number D610,732 S, which covers technology related to an ornamental design for the lampposts.

Duggal — which inventor Baldev Duggal owns along with co-petitioners Duggal Energy Solutions LLC and Duggal Visual Solutions Inc. — claimed it made a significant investment in labor, capital, engineering, and research and development, using the '732 patent to create lighting products sold under the trademark Lumisolair.

However, the respondents all sell products that are virtually identical to the Lumisolair lampposts, according to the complaint.

The petitioners engaged Gus Power and The StressCrete Group to manufacture components of Lumisolair light posts that were installed at New York locations, but Duggal and its affiliates stopped buying components from the two companies after learning that they were marketing their own identical products, according to the complaint.

The complaint sought an exclusion order barring the accused products from entering the U.S., as well as a cease-and-desist order prohibiting the respondents from marketing or selling infringing products.

The respondents tried to rebut some of the charges in comments submitted to the ITC on Aug. 19.

The Canadian companies said they were aware of very few products like their street lamps that were produced or available in the U.S., further contending that Duggal could be unable to satisfy the potential market for the products if the ITC did issue exclusion and cease-and-desist orders.

The respondents further argued that excluding importation of their unique product would "greatly harm the public interest by limiting access to an important source of energy efficiency technology — a result directly contrary to the public interest as identified by the U.S. government."

Gary M. Hnath, an attorney for the respondents, said Wednesday his clients intended to vigorously defend themselves in the case.

"It is the respondents' position that their products are significantly different from complainants' design patent and do not infringe the patent," Hnath said.

An ITC administrative law judge will hold a hearing on the evidence and make an initial determination that will be subject to review by the commission.

L. Donald Prutzman, an attorney for Duggal, said Wednesday, "we're extremely pleased that the commission has seen to institute an investigation."

The patent-in-suit is U.S. Patent Number D610,732 S.

The petitioners are represented by a team from Tannenbaum Helpert Syracuse & Hirschtritt LLP, including Prutzman and Amy S. Beard.

The respondents are represented by Mayer Brown LLP.

The investigation is Certain Wind and Solar-Powered Light Posts and Street Lamps, case number 337-TA-736, in the U.S. International Trade Commission.

--Additional reporting by Abigail Rubenstein

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