



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-976]

Certain Woven Textile Fabrics and Products Containing Same

Issuance of a General Exclusion Order; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order barring entry of certain woven textile fabrics and products containing same. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 18, 2015, based on a supplemented and twice-amended complaint filed by AAVN, Inc. of Richardson, Texas (“AAVN”). 80 FR 79094 (Dec. 18, 2015). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain woven textile fabrics and products containing same, by reason of infringement of claims 1-7 of U.S. Patent No. 9,131,790 (“the ’790 patent”) and/or by reason of false advertising. The notice of investigation named fifteen respondents: AQ Textiles, LLC of Greensboro, North Carolina; Creative Textile Mills Pvt. Ltd. of Mumbai, India and Indo Count Industries Ltd., both of Mumbai, India; Indo Count Global, Inc. of New York, New York; GHCL Limited of Uttar Pradesh, India; Grace Home Fashions LLC of New York, New York; E & E Company, Ltd. of Maharashtra, India; E&E Company, Ltd. d/b/a JLA Home of Fremont, California; Welspun Global Brands Ltd. of Gujarat, India; Welspun USA Inc. of New York, New York; Elite Home Products, Inc. of Saddle Brook, New Jersey; Pacific Coast Textiles, Inc. and Amrapur Overseas, Inc., both of Garden Grove, California; Westport Linens, Inc. of New York, New York; and Pradip Overseas Ltd. of Ahmedabad, India (“Pradip”). In the course of the investigation, fourteen of the respondents were terminated from the investigation based upon settlement agreement or consent order. *See* Order No. 21 at 2-3 (Nov. 10, 2016) (summarizing the procedural history of the investigation). The last remaining respondent was Pradip.

AAVN accused Pradip of false advertising, specifically alleging that Pradip misrepresented the thread count of sheets manufactured in India, imported into the United States, and sold in United States department stores. Second Am. Compl. ¶¶ 39-41, 80 (Nov. 12, 2015); *id.* at Ex. 46 (“800 Thread Count” sheets measured at 252.7 threads). Although Pradip responded to the complaint, Pradip later terminated its relationship with its attorneys and

represented that it would not participate in the remainder of the investigation. *See* Order No. 14 at 1 (Apr. 19, 2016); *see also* 19 CFR 210.17 (failures to act).

On September 2, 2016, AAVN moved for leave to file a motion for summary determination of violation. The summary determination motion that was appended argued, *inter alia*, that Pradip had violated section 337 by falsely advertising the thread count of its imported sheets, that the false advertising was deceptive, material, and injurious to AAVN. AAVN sought a general exclusion order and 100 percent bond during the Presidential review period. *See* 19 U.S.C. 1337(d)(2), (j)(3). On September 15, 2016, the Commission investigative attorney (“IA”) responded in support of the motion for leave and the accompanying summary determination motion including its proposed relief. Pradip did not respond. *See* 19 CFR 210.17(c).

On November 10, 2016, the ALJ granted the motion for summary determination as an initial determination (Order No. 21). The ID found that AAVN had shown a violation of section 337 by reason of false advertising under section 43 of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B). Order No. 21 at 7-9, 13-15. As to remedy, citing 19 U.S.C. 1337(d)(2), which sets forth the test for issuance of a general exclusion order, *id.* at 16, the ALJ found that “the evidence shows a widespread pattern of violation of Section 337,” *id.* at 17. The ALJ also found that “the evidence shows that it is difficult to identify the source and manufacturers of the falsely advertised products,” because “U.S. retailers fail to identify the manufacturer, importer or seller of the textile products at the point of sale.” *Id.* at 18. Nor do import records “reveal the names of the original manufacturers of the materials used to construct the imported products.” *Id.* Accordingly, the ALJ found “that the evidence shows that it is difficult, if not impossible, to identify the sources of the falsely advertised goods.” *Id.* Based on these findings the ALJ recommended the issuance of a general exclusion order. *Id.* In the alternative, the ALJ recommended the issuance of a limited exclusion order. *Id.* at 19. The ALJ recommended that

bond be set at 100 percent of the entered value of the falsely advertised products. *Id.*

On December 20, 2016, the Commission determined not to review Order No. 21, resulting in a finding of a violation of section 337. 81 FR 95195 (Dec. 27, 2016). The Commission requested written submissions on remedy, the public interest, and bonding. *Id.* at 95196. On January 6, 2017, AAVN and the IA filed submissions on these issues. On January 13, 2017, the IA filed a reply to AAVN's submission. No other submissions were received.

The Commission finds that the statutory requirements for relief under 19 U.S.C. 1337(d)(2) are met. In addition, the Commission finds that the public interest factors enumerated in 19 U.S.C. 1337(d)(1) do not preclude issuance of the statutory relief.

The Commission has determined that the appropriate remedy in this investigation is a general exclusion order prohibiting the entry of certain woven textile fabrics and products containing same that are falsely advertised through a misrepresentation of thread count. The Commission has also determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the general exclusion order. The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 20, 2017.

Lisa R. Barton,
Secretary to the Commission.

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