



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-1028

Certain Mobile Device Holders and Components Thereof

Commission's Determination to Review In-Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in-part the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on September 12, 2017, finding a violation of section 337 in the above-captioned investigation. Specifically, the Commission has determined to review the ID's analysis and findings with respect to the economic prong of the domestic industry. The Commission also requests written submissions, under the schedule set forth below, on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2737. 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 November 14, 2016, based on a complaint and supplements, filed on behalf of Nite Ize, Inc. of Boulder, Colorado ("Nite Ize"). 81 FR 79519-20 (Nov. 14, 2016). The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile device holders and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,602,376 ("the '376 patent"), U.S. Patent No. 8,870,146 ("the '146 patent"), U.S. Patent No. D734,746 ("the '746 patent"), and U.S. Patent No. D719,959 ("the '959 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The Commission's notice of investigation named the following respondents: REXS LLC of Lewes, Delaware; Spinido, Inc. of Brighton, Colorado; Guangzhou Kuaguoyi E-commerce Co., Ltd. d/b/a Kagu Culture ("Kagu Culture") of Baiyum, China; Sunpauto Co., Ltd. of Kowloon, Hong Kong; Shenzhen Topworld Technology Co. d/b/a IdeaPro ("IdeaPro") of Hong Kong, Hong Kong; Ninghuaxian Wangfulong Chaojishichang Youxian Gongsi, Ltd., d/b/a EasybuyUS of Shanghai, China; Chang Lee d/b/a Frentaly of Duluth, Georgia; Trendbox USA LLC d/b/a Trendbox ("Trendbox") of Scottsdale, Arizona; Tenswall d/b/a Shenzhen Tenswall International Trading Co. of La Puente, California; Luo Jieqiong d/b/a Wekin of Chang Sha, China; Pecham d/b/a Baichen Technology Ltd. of Wan Chai, Hong Kong; Cyrift d/b/a Guangzhou Sunway Ecommerce LLC. of Guangzhou, China; Rymemo d/b/a Global

Box, LLC of Dunbar, Pennsylvania; Yuan I d/b/a Bestrix of Hubei, China; Zhongshan Feiyu Hardware Technology Co., Ltd d/b/a YouFo (“YouFo”) of ZhongShan City, China; and Shenzhen Youtai Trade Company Limited, d/b/a NoChoice; Luo, Qiben, d/b/a Lita International Shop of Nanshan; Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams (“Newdreams”); Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong; Wang Zhi Gang d/b/a IceFox (“Icefox”); Dang Yuya d/b/a Sminiker; Lin Zhen Mei d/b/a Anson (“Anson”); Wu Xuying d/b/a Novoland; Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a MegaDream; Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd.; Scotabc d/b/a ShenChuang Optoelectronics Technology Co., Ltd.; Zhiping Zhou d/b/a Runshion; Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co. Ltd.; Barsone d/b/a Shenzhen Senweite Electronic Commerce Ltd.; Oumeiou d/b/a Shenzhen Oumeiou Technology Co., Ltd. (“Oumeiou”); Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd.; Shenzhen Yingxue Technology Co., Ltd. (“Shenzhen Yingxue”); Shenzhen Longwang Technology Co., Ltd., d/b/a LWANG; Hu Peng d/b/a AtomBud; Wang Guoxiang d/b/a Minse (“Minse”) all of Shenzhen, China. The Office of Unfair Import Investigations (“OUII”) was named as a party to the investigation.

Global Box, LLC and Chang Lee d/b/a Frentaly were terminated on the basis of a consent order. Commission Notice (March 21, 2017); Commission Notice (May 15, 2017). Barsone d/b/a Shenzhen Senweite Electronic Commerce Ltd., Shenzhen Youtai Trade Company Limited, d/b/a NoChoice, Ninghuaxian Wangfulong Chaojishichang Youxian Gongsi, Ltd., d/b/a EasybuyUS, Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong, Cyrift d/b/a Guangzhou Sunway E-Commerce LLC, Hu Peng d/b/a AtomBud, Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd., Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co.

Ltd., Luo, Qiben, d/b/a Lita International Shop, Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a MegaDream, Spinido Inc., Dang Yuya d/b/a Sminiker, and Yuan I d/b/a Bestrix were terminated because service could not be effected. Commission Notice (June 13, 2017). The remaining respondents were previously found in default (collectively, “the Defaulting Respondents”). Commission Notice (May 26, 2017). In addition, the ’746 and ’959 patents were previously terminated from the investigation. Commission Notice (July 28, 2017).

On May 18, 2017, Nite Ize filed a Motion for Summary Determination of Violation by the Defaulting Respondents and for a Recommended Determination on Remedy and Bonding, Including Issuance of a General Exclusion Order, Limited Exclusion Orders, and Cease and Desist Orders. On June 16, 2017, the ALJ issued Order No. 14 granting in-part Nite Ize’s motion for summary determination. The Commission determined not to review that ID. Commission Notice (July 14, 2017).

On September 12, 2017, the ALJ issued his final ID finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337. On the same day, the ALJ issued his Recommended Determination on Remedy and Bonding. No petitions for review were filed.

The Commission has determined to review the subject ID in-part. Specifically, the Commission has determined to review the ID’s analysis and findings with respect to the economic prong of the domestic industry requirement. The Commission does not request any submissions on the issue under review.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the

respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994) (Comm'n Op.). In particular, the written submissions should address any request for a cease and desist order in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainant seeks a cease and desist order against a defaulting respondent, the written submissions should respond to the following requests:

- (1) Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainant also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.
- (2) In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the

United States for each respondent against whom a cease and desist order is sought.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Each party's written submission must be filed no later than close of business on Thursday, November 30, 2017. Reply submissions must be filed no later than the close of business on Thursday, December 7, 2017. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission Rule 210.4(f), 19 C.F.R. 210.4(f). Submissions

should refer to the investigation number (“Inv. No. 337-TA-1028”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel^[1], solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission’s determination 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 C.F.R. Part 210.

By order of the Commission.

^[1] All contract personnel will sign appropriate nondisclosure agreements.

Lisa R. Barton
Secretary to the Commission

Issued: November 13, 2017

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