

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

In the Matter of

**CERTAIN EARPIECE DEVICES
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121
(Advisory Opinion Proceeding)**

INSTITUTION OF AN ADVISORY OPINION PROCEEDING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding as requested by Fantasia Trading, LLC (“Fantasia”). The Commission has also determined to set a target date of 180 days from the date of institution for completion of this proceeding, and to refer this matter to the Chief Administrative Law Judge (“CALJ”) for assignment to an administrative law judge (“ALJ”) for appropriate proceedings and an initial advisory opinion (“IAO”). The IAO is to be issued at the earliest practicable time, preferably within 120 days from the date of institution, but no later than 7 months after institution.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone 202-205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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 June 29, 2018, based on a complaint filed on behalf of Bose Corporation (“Bose”) of Framingham, Massachusetts. 83 FR 30,776 (Jun. 29, 2018). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain earpiece devices and components thereof by reason of infringement of one or more claims of U.S. Patent Nos. 9,036,852 (“the ’852 patent”); 9,036,853 (“the ’853 patent”); 9,042,590 (“the ’590 patent”); 8,249,287 (“the ’287 patent”); 8,311,253 (“the ’253 patent”); and 9,398,364 (“the ’364 patent”). The notice of investigation named fourteen respondents. The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation.

On February 8, 2019, Bose moved for summary determination of a violation of section 337. On March 22, 2019, OUII filed a response supporting Bose's motion in substantial part and supporting the requested remedy of a general exclusion order ("GEO").

On June 28, 2019, the presiding ALJ issued an initial determination ("ID") (Order No. 16) granting in part Bose's motion for summary determination of a violation of section 337 with respect to the '852, '853, '590, '287, and '253 patents by certain respondents who were in default or did not participate in the investigation.

On August 14, 2019, the Commission reviewed *inter alia* the economic prong of the domestic industry requirement with respect to the '364 patent and affirmed with modifications the ID's finding of a violation of section 337 with respect to the '852, '853, '590, '287, and '253 patents. 84 FR 43159-161 (Aug. 20, 2019). The Commission also requested additional briefing from the parties on the issue under review and invited the parties, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. *Id.* at 43160-161.

On October 31, 2019, the Commission issued a GEO, a limited exclusion order, and cease and desist orders with respect to certain claims of the asserted patents other than the '364 patent. 84 FR 59838-840 (Nov. 6, 2019). The GEO prohibits the unlicensed importation of certain earpiece devices and components thereof that infringe claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; and claims 1, 7, and 8 of the '287 patent. The Commission also imposed a bond in the amount of one hundred percent (100%) of the entered value of the imported articles during the period of Presidential review. The Commission remanded certain issues to the ALJ and thereafter the '364 patent was withdrawn from the investigation and the investigation was terminated in its entirety. 84 FR 72382-383 (Dec. 31, 2019).

On February 4, 2022, Fantasia, the importer of record, filed the subject request for an advisory opinion that Anker's Soundcore Liberty 2 Pro ("A3909"), Soundcore Liberty Neo ("A3911"), and Soundcore Life Dot 2 ("A3922") products (collectively, the "Anker Earphones") do not infringe claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; and claims 1, 7, and 8 of the '287 patent, and thus are not covered by the GEO issued in this investigation.

Having reviewed Fantasia's request in view of the record below, the Commission has determined to institute an advisory opinion proceeding under Commission Rule 210.79 to ascertain whether the Anker Earphones infringe claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; and claims 1, 7, and 8 of the '287 patent, and are covered by the GEO issued in this investigation. The Commission has further determined to refer the matter to the CALJ for assignment to an ALJ for appropriate proceedings and to issue an IAO at the earliest practicable time, preferably within 120 days of institution, but no later than 7 months after institution. The ALJ shall set a target date at two months following the date of issuance of the IAO. The target date may be extended for good cause shown. The following entities are named as parties to the proceeding: (1) Bose; and (2) Fantasia.

The Commission vote for this determination took place on March 8, 2022.

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 CFR Part 210.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a large, loopy oval flourish.

Lisa R. Barton
Secretary to the Commission

Issued: March 8, 2022