

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ARTIFICIAL EYELASH
EXTENSION SYSTEMS, PRODUCTS,
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1226

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING SUMMARY DETERMINATION THAT THE
COMPLAINANT FAILED TO SATISFY THE TECHNICAL PRONG OF THE
DOMESTIC INDUSTRY REQUIREMENT WITH RESPECT TO ONE PATENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 35) of the presiding administrative law judge (“ALJ”) granting summary determination that complainant Lashify, Inc. failed to satisfy the technical prong of the domestic industry requirement with respect to U.S. Patent No. 10,660,388.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 708-5468. 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: On October 28, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Lashify, Inc. of Glendale, California (“Lashify”). See 85 FR 68366-67. The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain artificial eyelash extension systems, products, and components thereof by reason of infringement of U.S. Patent Nos. 10,660,388 (“the ’388 patent”) and 10,721,984 (“the ’984 patent”) and U.S. Design Patent Nos. D877,416 and D867,664. The complaint also alleges the existence of a domestic industry. The notice of investigation names nine respondents, including KISS Nail Products, Inc. of Port Washington, New York; Ulta Salon,

Cosmetics & Fragrance, Inc. of Bolingbrook, Illinois; Walmart Inc. of Bentonville, Arkansas; and CVS Pharmacy, Inc. of Woonsocket, Rhode Island (collectively, the “KISS respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *Id.*

On May 11, 2021, the KISS respondents moved for a summary determination pursuant to Commission Rule 210.18 (19 CFR 210.18) that Lashify failed to satisfy the technical prong of the domestic industry requirement for the ’388 patent and failed to satisfy the economic prong of the domestic industry requirement for the ’984 patent. On May 21, 2021, Lashify filed a response in opposition to the motion and OUII filed a response in support of the motion.

On June 9, 2021, the ALJ issued the subject ID pursuant to Commission Rules 210.18(b) and 210.42(c) (19 CFR 210.18(b), 210.42(c)), granting summary determination that Lashify failed to satisfy the technical prong of the domestic industry requirement with respect to the ’388 patent. Order No. 35 (Jun. 9, 2021). The ALJ also denied the KISS respondents’ motion with respect to the economic prong for the ’984 patent.

On June 16, 2021, Lashify petitioned for review of the ID. On June 24, 2021, both the KISS respondents and OUII filed responses opposing the petition.

The Commission has determined not to review the subject ID. The Commission has determined that there is no violation of section 337 with respect to the ’388 patent based on Lashify’s failure to demonstrate that its products practice the ’388 patent.

The Commission vote for this determination took place on July 9, 2021.

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the complainant complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (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 CFR Part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: July 9, 2021