

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 DECISION TO EXTEND THE DEADLINE FOR
DETERMINING WHETHER TO REVIEW AN INITIAL DETERMINATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the deadline for determining whether to review the final initial determination (“FID”) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation to January 20, 2022.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. 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 No. 10,660,388 (“the ’388 patent”) and U.S. Patent No. 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 (“NOI”) names nine respondents, including KISS Nail Products, Inc. of Port Washington, New York; Ulta Beauty, Inc. of Bolingbrook, Illinois; CVS Health Corporation of Woonsocket, Rhode Island; Walmart, Inc. of Bentonville, Arkansas; Qingdao Hollyren Cosmetics Co., Ltd. d/b/a Hollyren of Shandong Province, China; Qingdao Xizi International

Trading Co., Ltd. d/b/a Xizi Lashes of Shandong Province, China; Qingdao LashBeauty Cosmetic Co., Ltd. d/b/a Worldbeauty of Qingdao, China; Alicia Zeng d/b/a Lilac St. and Artemis Family Beginnings, Inc. of San Francisco, California; and Rachael Gleason d/b/a Avant Garde Beauty Co. of Dallas, Texas. *Id.* The Office of Unfair Import Investigations is also a party to the investigation. *Id.*

Lashify amended the complaint and NOI to substitute CVS Pharmacy, Inc. of Woonsocket, Rhode Island in place of named respondent CVS Health Corporation and Ulta Salon, Cosmetics & Fragrance, Inc. of Bolingbrook, Illinois in place of named respondent Ulta Beauty, Inc. *See* Order No. 10, *unreviewed by* Comm'n Notice (Feb. 10, 2021); *see also* 86 Fed. Reg. 9535 (Feb. 16, 2021).

The Commission previously terminated the investigation as to claims 2-4 and 7 of the '388 patent and claims 6-8, 12, 18-19, 25-26, and 29 of the '984 patent based on Complainant's partial withdrawal of the complaint. *See* Order No. 24 (Apr. 23, 2021), *unreviewed by* Comm'n Notice (May 11, 2021). The Commission also previously terminated claims 2-5, 10-11, 14, 17, 21-22, and 24 of the '984 patent from the investigation. *See* Order No. 38 (June 22, 2021), *unreviewed by* Comm'n Notice (July 6, 2021).

The Commission previously terminated Rachael Gleason d/b/a Avant Garde Beauty Company from the investigation based on a Consent Order. *See* Order No. 28, *unreviewed by* Comm'n Notice (May 20, 2021).

The Commission previously determined that Lashify failed to satisfy the technical prong of the domestic industry requirement for the '388 patent. *See* Order No. 35, *unreviewed by* Comm'n Notice (July 9, 2021).

On October 28, 2021, the presiding ALJ issued the FID, finding that no violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain artificial eyelash extension systems, products, and components thereof. FID at 141-142. The FID also includes the ALJ's recommended determination on remedy and bonding should the Commission find a violation of section 337.

On November 9, 2021, Lashify filed a petition for review of the FID's findings of non-infringement and that the technical prong of the domestic industry requirement has not been satisfied with respect to the '984 patent and that Lashify has not satisfied the economic prong of the domestic industry requirement with respect to any of the patents-in-suit. That same day, Respondents filed a contingent petition seeking review of alleged additional, independent grounds of non-infringement and invalidity to support the FID's finding of no violation.

On November 17, 2021, Lashify, Respondents, and OUII filed their respective responses to the petitions for review.

The Commission has determined to extend the deadline for determining whether to review the FID to January 20, 2022.

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

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', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: December 10, 2021