

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ELECTRIC SHAVERS AND
COMPONENTS AND ACCESSORIES
THEREOF**

Investigation No. 337-TA-1230

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART
AN INITIAL DETERMINATION GRANTING IN PART COMPLAINANT'S MOTION
FOR SUMMARY DETERMINATION OF A VIOLATION OF SECTION 337;
SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON
THE ISSUES UNDER REVIEW AND ON REMEDY,
THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined to review in part an initial determination ("ID") (Order No. 33) of the presiding administrative law judge ("ALJ"), granting in part summary determination on violation of section 337 and including a recommended determination ("RD") on remedy and bonding. The Commission has determined to review the ID's findings concerning the economic prong of the domestic industry requirement. The Commission requests briefing from the parties on the issue under review, and briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, 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 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, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On November 18, 2020, the Commission instituted this investigation based on a complaint filed by Complainant Skull Shaver ("Skull Shaver") of Moorestown, New Jersey. 85 FR 73510-11 (Nov. 18, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electric shavers and components and accessories thereof by reason of

infringement of certain claims of U.S. Patent Nos. 8,726,528 and D672,504. *Id.* The Commission’s notice of investigation named the following eleven entities as respondents: Rayenbarny Inc. (“Rayenbarny”) of New York, New York; Bald Shaver Inc. (“Bald Shaver”) of Toronto, Canada; Suzhou Kaidiya Garments Trading Co., Ltd. (“Suzhou”) d.b.a. “Digimator” of Suzhou, China; Shenzhen Aiweilai Trading Co., Ltd. (“Aiweilai”) d.b.a. “Teamyo” of Shenzhen, China; Wenzhou Wending Electric Appliance Co., Ltd. of Yueqing City, China; Shenzhen Nukun Technology Co., Ltd. (“Nukun”) d.b.a. “OriHea” of Shenzhen, China; Yiwu Xingye Network Technology Co. Ltd. (“Yiwu Xingye”) d.b.a. “Roziapro” of Yiwu, China; Magicfly LLC (“Magicfly”) of Hong Kong; Yiwu City Qiaoyu Trading Co., Ltd. (“Yiwu City”) of Yiwu, China; Shenzhen Wantong Information Technology Co., Ltd. (“Wantong”) d.b.a. “WTONG” of Shenzhen, China; and Shenzhen Junmao International Technology Co., Ltd. (“Junmao”) d.b.a. “Homeas” of Shenzhen, China. The notice of investigation also named the Office of Unfair Import Investigations (“OUII”) as a party. *Id.*

The Commission terminated Rayenbarny from the investigation because its accused product was actually imported by Benepuri LLC (“Benepuri”) of Menands, New York; the Commission allowed Benepuri to intervene as a respondent. Notice, 85 FR 82514, 82515 (Dec. 18, 2020). The Commission later granted Skull Shaver’s motion to amend the Complaint and the notice of investigation to correct the name of Wenzhou Wending Electric Appliance Co., Ltd. d.b.a. “Paitree” is Wenzhou Wending Electric Appliance Co., Ltd. (“Wenzhou”), and to correct the addresses of several respondents. Notice, 86 FR 14645, 14645 (Mar. 17, 2021). The Commission terminated Magicfly from the investigation on the basis of settlement. Notice at 2 (May 19, 2021). The Commission terminated Nukun and Benepuri from the investigation on the basis of withdrawal of the complaint. Notice at 2 (June 21, 2021) (Nukun); Notice at 2 (Oct. 28, 2021) (Benepuri). All of the remaining respondents (*i.e.*, all respondents other than Magicfly, Nukun, Benepuri and Rayenbarny) defaulted. *See* Notice at 3 (May 21, 2021) (seven defaulting respondents); Notice at 2 (Dec. 9, 2021) (Bald Shaver). Taken together, the eight defaulting respondents are: Suzhou; Yiwu City; Wenzhou; Aiweilai; Junmao; Wantong; Yiwu Xingye; and Bald Shaver.

On May 26, 2021, Skull Shaver filed a motion for summary determination of violation of section 337 by the eight defaulting respondents and for a recommendation that the Commission issue a general exclusion order (“GEO”) and cease and desist orders (“CDOs”). *See* Complainants’ Motion for Summary Determination of Violation and for Recommended Determination on Remedy and Bonding (“Skull Shaver Motion”). On June 7, 2021, OUII filed a response in support of Skull Shaver’s motion. *See* Commission Investigative Staff’s Response to Skull Shaver’s Motion for Summary Determination of Violation (“OUII Response”). No respondent filed a response to Skull Shaver’s motion.

On September 23, 2021, OUII filed a notice of supplemental authority concerning the domestic industry requirement. On September 28, 2021, the ALJ issued an order (Order No. 31) ordering certain supplementation of Skull Shaver’s domestic industry analysis. On October 14, 2021, Skull Shaver submitted its supplement in response to Order No. 31. No other responses to Order No. 31 were filed. On November 18, 2021, the ALJ granted-in-part Skull Shaver’s motion for summary determination as the subject ID.

The ID finds that Skull Shaver owns the asserted patents, and that those patents are valid and enforceable. ID at 3. The ID further finds that although all respondents imported, sold for importation, or sold within the United States after importation at least one accused article, the only respondents whose articles infringe the asserted patents are Yiwu Xingye and Yiwu City. *Id.* at 3-4. The ID finds that personal jurisdiction is not necessary over each defaulting respondent, but that the defaulting respondents waived any opportunity to contest the allegation that personal jurisdiction exists. *Id.* The ID further finds that Skull Shaver meets the technical prong and the economic prong of the domestic industry requirement. *Id.* at 4. As to remedy, the RD finds that there is a widespread pattern of unauthorized use of the asserted patents and that a GEO is necessary to prevent circumvention. *Id.* at 4. The RD also recommends issuance of CDOs against the two infringing respondents that maintain domestic inventories. RD at 80-81. The RD recommends a bond rate of 100% because complete pricing information is not available. RD at 82.

No petitions for review of the ID were filed.

The Commission has determined to review the ID's findings concerning the economic prong of the domestic industry requirement, and not to review the ID's findings on other issues.

The parties are asked to brief the following issues concerning the economic prong of the domestic industry requirement:

- (1) Within each of the general categories of labor (management, marketing/creative, customer service, and logistics/warehousing), please explain which particular activities differ from those of a mere importer, including by addressing the extent to which the activities do not need to take place in the United States either as a legal or a practical matter.
- (2) Please provide, to the extent permitted by the record, a breakout or estimated breakout of the claimed expenditures by type of activities to allow separate consideration of expenses for activities that do not need to take place in the United States either as a legal or a practical matter. In your answer please be sure to address (a) the various tasks performed by management, (b) the work done by logistics/warehouse employees related to quality control and repair, and (c) the work done by marketing/creative employees related to industrial design, research and development, and prototyping.
- (3) Does the total claimed expense for logistics/warehouse labor costs (see, e.g., ID at 63) include all activities done by those workers, or only quality control and repair work?

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) one or more cease and desist orders that could result in the Defaulting Respondents 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, Comm'n Op. at 7-10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or CDO 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, disapprove, or take no action on the Commission's determination. 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: The parties to the investigation are requested to file written submissions on the issue under review as set forth above. Parties to this investigation, interested government agencies, and any other interested parties are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should include views on the recommended determination by the ALJ on remedy and bonding.

In its initial written submissions, Skull Shaver is also requested to identify the remedy sought and Skull Shaver and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Skull Shaver is further requested to provide the HTSUS subheadings under which the subject articles are imported and to supply identification information for all known importers of the subject articles.

Initial written submissions, including proposed remedial orders, must be filed no later than close of business on January 18, 2022. Reply submissions must be filed no later than the close of business on January 25, 2022. No further submissions on any of 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. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1230) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/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 by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission vote for these determinations took place on January 3, 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.

Issued: January 4, 2022.



Lisa R. Barton,
Secretary to the Commission.