

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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In the Matter of)

CERTAIN PURPLE PROTECTIVE GLOVES)

Inv. No. 337-TA-500

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION FINDING A VIOLATION OF SECTION 337 AND THAT THE
DOMESTIC INDUSTRY REQUIREMENT IS MET; SCHEDULE FOR WRITTEN
SUBMISSIONS ON REMEDY, PUBLIC INTEREST, AND BONDING**

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. 17) issued by the presiding administrative law judge ("ALJ") finding a violation of section 337 and that the domestic industry requirement has been met in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 205-3095. Copies of all nonconfidential 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 be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 26, 2003, based on a complaint filed by Kimberly-Clark Corporation and Safeskin Corporation (collectively "K-C/Safeskin"). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain purple protective gloves by reason of infringement of U.S. Registered Trademark Nos. 2,596,539, 2,533,260, and 2,593,382.

The complaint named seven respondents, six of which have entered into settlement agreements with K-C/Safeskin. On May 24, 2004, the administrative law judge ("ALJ") issued an initial determination (Order No. 15) terminating the investigation as to Latexx Partners Berhad and Medtexx Partners on the basis of a confidential settlement agreement. On June 1, 2004, the ALJ issued another initial

determination (Order No. 16), terminating the investigation as to The Delta Group; Delta Hospital Supply, Inc.; Delta Medical Systems, Inc.; and Delta Medical Supply Group, Inc. on the basis of a settlement agreement and a consent order. The Commission determined not to review those initial determinations.

The seventh respondent – Dash Medical Gloves, Inc. (“Dash”) – failed to reply to the complaint and notice of investigation. Dash subsequently indicated that it “will not oppose entry of a Default in this matter.” On May 24, 2004, the ALJ issued an ID (Order No. 14) finding Dash in default pursuant to Commission rule 210.16(a)(1). The Commission determined not to review the initial determination.

On September 2, 2004, K-C/Safeskin filed a motion pursuant to Commission rule 210.18 for summary determination on the issues of violation of section 337 and the existence of a domestic industry. The motion also sought a general exclusion order. On September 13, 2004, the Commission’s Investigative Attorney (“IA”) filed a response in support of the motion.

On September 23, 2004, the ALJ issued an initial determination (Order No. 17) finding “substantial, reliable, and probative evidence” of a violation of section 337 by reason of Dash’s importation and sale of the accused gloves and the existence of a domestic industry. No party petitioned for review of the ID. As to remedy, the ALJ recommended the issuance of a general exclusion order. He also recommended that the bond permitting temporary importation during the Presidential review period be set at 100 percent of the value of the infringing imported product.

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or issue a cease and desist order that could result in the remaining respondent 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, it 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 *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

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 in this investigation include the effect that an exclusion order 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 President has 60 days to approve or disapprove the Commission’s action. During this period, the subject articles would be entitled to enter the United States under a 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.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the September 23, 2004 recommended determination by the ALJ on remedy and bonding. Complainants and the Commission's investigative attorney are also requested to submit proposed orders for the Commission's consideration. The written submissions and proposed orders must be filed no later than close of business on November 12, 2004. Reply submissions, if any, must be filed no later than the close of business on November 19, 2004. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons that the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and sections 210.16 and 210.42 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.16, 210.42.

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: October 19, 2004