

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington D.C. 20436

In the Matter of

CERTAIN EAR PROTECTION DEVICES

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) **Inv. No. 337-TA-518**
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**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN
INITIAL DETERMINATION TERMINATING THE INVESTIGATION
WITH RESPECT TO ALL REMAINING RESPONDENTS; ISSUANCE OF
CONSENT ORDERS; REQUEST FOR WRITTEN SUBMISSIONS
ON REMEDY, THE PUBLIC INTEREST, AND BONDING
WITH RESPECT TO RESPONDENTS FOUND IN DEFAULT**

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) of the presiding administrative law judge (ALJ) in the above-captioned investigation terminating the investigation as to six respondents. The investigation was terminated as to two respondents based on settlement agreements and consent orders and as to four respondents based on consent orders alone. The Commission also is requesting briefing on remedy, public interest, and bonding with respect to three respondents previously found in default.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., telephone 202-205-3041, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436. 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 SW., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also 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-ON-LINE) 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 March 16, 2004, based on a complaint filed by 180s, Inc. and 180s, LLC of Baltimore, Maryland. Complainants filed an amended complaint on July 23, 2004. The amended complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ear protection devices by reason of infringement of claims 1, 3, 13, 17-19, and 21-22 of U.S. Patent No. 5,835,609 (the '609 patent). The complaint named nine respondents: Ningbo Electric and Consumer Goods, Import & Export Corp. (Ningbo) of China; Vollmacht Enterprise Co., Ltd. (Vollmacht) of Taiwan; March Trading of New York, NY; Alicia International, Inc., d/b/a Lincolnwood Merchandising of Niles, IL; Hebron Imports of Chicago, IL; Ross Sales of Commack, NY; Value Drugs Rock, Inc. of New York, NY; Song's Wholesaler (Song's) of Washington, DC; and Wang Da, Inc. Retail and Wholesales (Wang Da) of New York, NY. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On September 24, 2004, complainants filed a motion pursuant Commission rule 210.16 for an order to show cause and entry of a default judgment against three respondents: Ningbo, Vollmacht, and Wang Da. The Commission investigative attorney supported the motion. None of the respondents filed a response to the motion. The ALJ issued a show cause order (Order No. 4) on October 12, 2004. The order required the three respondents to show cause why they should not be held in default, having not responded to the complaint or motion for a show cause order.

The ALJ issued an ID on November 2, 2004 finding that respondents Ningbo, Vollmacht, and Wang Da did not respond to the complaint, notice of investigation, or the order to show cause. Consequently, the ALJ found the respondents in default, and pursuant to Commission Rule 210.16(b)(3), to have waived their right to appear, be served with documents, or contest the allegations in the complaint. No petitions for review of the ID were filed. The Commission did not review the ID, and it thereby became the final determination of the Commission.

On March 23, 2005, the complainants filed six motions for termination of the investigation with respect to the six remaining respondents. The motions for termination as to March Trading and Song's were based on settlement agreements and consent orders. The four remaining motions were based on consent orders alone. The Commission Investigative Attorney filed a response in support of the motions on March 25, 2005.

The ALJ issued the subject ID on April 1, 2005, granting the motions for termination. No party petitioned for review of the ID pursuant to 19 C.F.R. § 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 C.F.R. § 210.44.

Section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission Rule 210.16(c), 19 CFR 210.16(c), authorize the Commission to order limited relief against the respondents found in

default unless, after consideration of public interest factors, it finds that such relief should not issue. The Commission may issue an order that could result in the exclusion of the defaulting respondents' products from entry into the United States, and/or issue 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 their products. 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 are 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).

When 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 include the effect that an exclusion order and/or cease and desist orders 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 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 the issues of remedy, the public interest, and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are asked to provide the expiration date of the '609 patent and the HTSUS numbers under which the infringing goods are imported. The written submissions and proposed remedial orders must be filed no later than close of business on April 29, 2005. Reply submissions must be filed no later than the close of business on May 6, 2005. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. 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 why 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 non-confidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.16(c), 210.21(c), and 210.42(h) of the Commission's Rules of Practice and Procedure.

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: April 19, 2005