

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN RADIO CONTROL HOBBY
TRANSMITTERS AND RECEIVERS
AND PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-763

**NOTICE OF COMMISSION ISSUANCE OF LIMITED EXCLUSION ORDER AGAINST
INFRINGING PRODUCTS OF RESPONDENTS FOUND IN DEFAULT;
TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1337), and has issued a limited exclusion order against infringing products of respondents previously found in default, Koko Technology, Ltd. ("Koko") and Cyclone Toy & Hobby ("Cyclone") of China.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential 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 also be obtained by accessing its Internet server at <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 this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 9, 2011, based on a complaint filed by Horizon Hobby, Inc. ("Horizon") of Champaign, Illinois. 76 *Fed. Reg.* 12995-96 (March 9, 2011). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §§ 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio control hobby transmitters and receivers and products containing same by reason of infringement of certain claims of U.S. Patent No. 7,391,320 ("the '320 patent"), U.S. Copyright Reg. No. TX-7-226-001 ("the '001 copyright"), and U.S. Trademark Reg. No. 3,080,770 ("the '770 mark"). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Koko and Cyclone as the only respondents. The complaint and

notice of investigation were served on respondents on March 3, 2011. No responses were received.

On April 11, 2011, Horizon moved, pursuant to 19 C.F.R. § 210.16, for: (1) an order directing respondents Koko and Cyclone to show cause why they should not be found in default for failure to respond to the complaint and notice of investigation as required by § 210.13; and (2) the issuance of an ID finding Koko and Cyclone in default upon their failure to show cause. Koko and Cyclone did not respond to the motion. On April 22, 2011, the presiding administrative law judge (“ALJ”) issued Order No. 5 which required Koko and Cyclone to show cause no later than May 12, 2011, as to why they should not be held in default and judgment rendered against them pursuant to § 210.16. No response was received from either Koko or Cyclone to the show cause order.

The ALJ issued an initial determination (“ID”) (Order No. 6) on May 16, 2011, finding both Koko and Cyclone in default, pursuant to §§ 210.13, 210.16, because both respondents did not respond to the complaint and notice of investigation, or to Order No. 5 to show cause. Also, on May 17, 2011, the ALJ issued an ID (Order No. 7) terminating the investigation because Koko and Cyclone are the only respondents in the investigation. On June 3, 2011, the Commission issued notice of its determination not to review the ALJ’s IDs finding Koko and Cyclone in default and terminating the investigation. *76 Fed. Reg.* 33362-63 (June 8, 2011). In the same notice, the Commission requested written submissions on the issues of remedy, the public interest, and bonding with respect to respondents found in default.

Horizon and the Commission investigative attorney (“IA”) submitted briefing responsive to the Commission’s request on June 24, 2011, and the IA submitted a reply brief on July 1, 2011. Horizon requested both a limited exclusion order directed to Koko’s and Cyclone’s infringing products and a general exclusion order as well. The IA recommended a limited exclusion order and opposed Horizon’s request for a general exclusion order.

Having reviewed the record in the investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined to issue relief directed solely to the defaulting respondents pursuant to Section 337(g)(1). 19 U.S.C. § 1337(g)(1). The Commission found that the statutory requirements of section 337(g)(1)(A)-(E) (19 U.S.C. § 1337(g)(1)(A)-(E)) were met with respect to the defaulting respondents. Pursuant to section 337(g)(1) and Commission Rule 210.16(c) (19 C.F.R. § 210.16(c)), the Commission presumed the facts alleged in the complaint to be true. Based on the record in this investigation and the written submissions of the parties, the Commission has determined that the appropriate form of relief is a limited exclusion order directed to the defaulting respondents prohibiting the unlicensed entry of radio control hobby transmitters and receivers and products containing same that are covered by one or more of claims 1-5 of the ’320 patent, the ’001 copyright, or the ’770 mark, and that are manufactured abroad by or on behalf of, or are imported by or on behalf of, Koko or Cyclone, or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or its successors or assigns. 19 U.S.C. § 1337(g)(1). The Commission has determined not to issue a general

exclusion order because Horizon did not establish the evidentiary showing required by 19 U.S.C. § 1337(g)(2) and it did not declare that it sought a general exclusion order under Commission rule 210.16(c)(2) (19 C.F.R. 210.16(c)(2)).

The Commission has further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. § 1337(g)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission has determined that a bond of 100 percent of the entered value of the covered products is required during the period of Presidential review (19 U.S.C. §§ 1337(j)). The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission has terminated this investigation. 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) and 210.41 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16(c) and 210.41).

By order of the Commission.

/s/
James R. Holbein
Secretary to the Commission

Issued: September 27, 2011