

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INK APPLICATION
DEVICES AND COMPONENTS
THEREOF AND METHODS OF USING
THE SAME**

Investigation No. 337-TA-832

**NOTICE OF COMMISSION ISSUANCE OF A 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 issued a limited exclusion order against infringing products of respondents T-Tech Tattoo Device Inc. of Ontario, Canada (“T-Tech”), Yiwu Beyond Tattoo Equipments Co., Ltd. of Yiwu City, China (“Yiwu”), and Guangzhou Pengcheng Cosmetology Firm of Guangzhou, China (“Guangzhou Pengcheng”). The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. 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 6, 2012, based on a complaint filed by MT.Derm GmbH of Berlin, Germany and Nouveau Cosmetique USA Inc. of Orlando, Florida (collectively “Complainants”) alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), as amended (“section 337”), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink application devices and components thereof and methods of using the same by reason of infringement of certain claims of U.S. Patent Nos.

6,345,553 (“the ’553 patent”) and 6,505,530 (“the ’530 patent”). 77 *Fed. Reg.* 13351 (Mar. 6, 2012). The Commission’s Notice of Investigation (“NOI”) named T-Tech, Yiwu, and Guangzhou Pengcheng as respondents. The complaint was served on all named respondents on March 1, 2012. The Office of Unfair Import Investigations was named as a party to the investigation.

On April 16, 2012, Complainants filed a motion seeking a determination that respondents T-Tech, Yiwu, and Guangzhou be found in default based on their failure to respond to the Complaint and Notice of Investigation. On May 1, 2012, the ALJ issued Order No. 5, ordering the respondents to show cause by close of business on May 16, 2012, why they should not be found in default. No response was filed, and on May 31, 2012, the ALJ issued an initial determination (“ID”) (Order No. 7), granting the motion for default pursuant to section 210.16(a)(1) of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.16(a)(1)). On June 6, 2012, T-Tech submitted correspondence to the Commission stating that it had not received any prior communication from the Commission and arguing that the ID finding it in default should be reviewed. On June 13, 2012, the IA filed a petition for review of Order No. 7 as to the finding of default against T-Tech. On June 29, 2012, the Commission determined not to review the portion of Order No. 7 finding Yiwu and Guangzhou Pengcheng in default pursuant to section 210.16 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.16), but reversed the finding of default against T-Tech. Notice (June 29, 2012).

On March 20, 2013, Complainants filed a motion for summary determination of violation of section 337 against T-Tech. On April 17, 2013, Complainants also filed a motion for an ID finding T-Tech in default pursuant to Commission Rule 210.17(e). On April 19, 2013, the ALJ issued Order No. 32, ordering T-Tech to show cause as to why it should not be found in default for failing to comply with deadlines set forth in the procedural schedule. On April 25, 2013, T-Tech filed a response to Order No. 32. On April 29, 2013, the IA filed a response in support of Complainants’ motion requesting that T-Tech be found in default. On July 17, 2013, the ALJ issued an ID (Order No. 35), granting-in-part Complainants’ motion for summary determination of violation against T-Tech or, in the alternative, granting Complainants’ motion for an ID finding T-Tech in default pursuant to section 210.17 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.17). On August 16, 2013, the Commission determined not to review the portion of the ID finding T-Tech in default. 78 *Fed. Reg.* 52212-13 (Aug. 22, 2013). The Commission found the portion of Order No. 35 granting summary determination of violation moot. *Id.* The Commission also requested briefing from the parties and the public on the issues of remedy, the public interest, and bonding. *Id.*

Complainants and the Commission investigative attorney (“IA”) submitted briefing responsive to the Commission’s request on August 30, 2013. Each proposed a limited exclusion order directed to the accused products of respondents Yiwu, Guangzhou Pengcheng, and T-Tech. Complainants stated that they do not seek entry of cease and desist orders against any of the defaulting respondents. The IA recommended allowing entry by all of the defaulting respondents under a bond of 100 percent of the entered value during the period of Presidential review. Complainants requested a bond of 100 percent against respondent T-Tech, but argued that respondents Yiwu and Guangzhou Pengcheng not be allowed to import any of their infringing products during the period of Presidential review because they were found in default under section 337(g)(1). In the alternative, Complainants requested that the Commission set a

bond of 100 percent of the entered value against respondents Yiwu and Guangzhou Pengcheng. On September 6, 2013, Complainants and the IA submitted reply submissions.

The Commission finds that the statutory requirements of section 337(g) (19 U.S.C. § 1337(g)) is met with respect to respondents Yiwu and Guangzhou Pengcheng. Accordingly, pursuant to section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission rule 210.16(c) (19 C.F.R. § 210.16(c)), the Commission presumes the facts alleged in the complaint to be true and finds that Yiwu and Guangzhou Pengcheng are in violation of section 337. The Commission further finds that T-Tech is in violation of section 337 pursuant to section 210.17 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.17), which states that a failure to participate in an investigation may provide a basis for a finding of violation of section 337 under section 337(d)(1) (19 U.S.C. § 1337(d)(1)).

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain ink application devices and components thereof that are manufactured abroad by or on behalf of, or imported by or on behalf of, respondents Yiwu and T-Tech by reason of infringement of one or more of claims 1-3, 7, 8, 19, and 20 of the '530 patent. The Commission has also determined to issue a limited exclusion order prohibiting the unlicensed entry of certain ink application devices and components thereof that are manufactured abroad by or on behalf of, or imported by or on behalf of, respondent Guangzhou Pengcheng by reason of infringement of one or more of 1-3, 7-12 and 16-20 of the '530 patent and claims 1-4, 10, 12-14, 21-23, and 26-28 of the '553 patent. The Commission has further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and section 337(d)(1) (19 U.S.C. § 1337(d)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission has determined that the bond for importation during the period of Presidential review shall be in the amount of 100 percent of the entered value of the imported subject articles of all defaulting respondents. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

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 C.F.R. Part 210).

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: October 23, 2013