

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LIP BALM PRODUCTS,
CONTAINERS FOR LIP BALM, AND
COMPONENTS THEREOF**

Inv. No. 337-TA-961

NOTICE OF INSTITUTION OF INVESTIGATION

Institution of investigation pursuant to 19 U.S.C. § 1337

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 12, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of eos Products, LLC of New York, New York and The Kind Group LLC of New York, New York. A supplement to the complaint was filed on June 30, 2015. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lip balm products, containers for lip balm, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,888,391 (“the ’391 patent”). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, D.C. 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (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>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10 (2015).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on July 9, 2015, ORDERED THAT –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain lip balm products, containers for lip balm, and components thereof by reason of infringement of one or more of claims 1-3, 5-7, 10-18, 20-22, and 25-30 of the '391 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

eos Products, LLC
19 West 44th Street, Suite 811
New York, NY 10036

The Kind Group LLC
19 West 44th Street, Suite 811
New York, NY 10036

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

OraLabs, Inc.
18685 East Plaza Drive
Parker, CO 80134

CVS Health Corporation
1 CVS Drive
Woonsocket, RI 02895-6146

CVS Pharmacy, Inc.
1 CVS Drive
Woonsocket, RI 02895-6195

Walgreens Boots Alliance, Inc.
108 Wilmot Road

Deerfield, IL 60015

Walgreen Co.
108 Wilmot Road
Deerfield, IL 60015

Dollar Tree, Inc.
500 Volvo Parkway
Chesapeake, VA 23320-1604

Dollar Tree Stores, Inc.
500 Volvo Parkway
Chesapeake, VA 23320

Five Below Inc.
1818 Market Street, Suite 1900
Philadelphia, PA 19103

Wuxi Sunmart Science and Technology Co.,
Ltd., a/k/a Wuxi Sunmart Group Co., Ltd.,
a/k/a Wuxi Shengma Science & Technology Co., Ltd.
No. 268 Huandong Road
Huangtang Industrial Park
Wuxi, Jiangsu 214407
China

Wuxi Sunmart Plastic Co., Ltd.
No. 268 Huandong Road
Huangtang Industrial Park
Wuxi, Jiangsu 214407
China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Suite 401, Washington, D.C. 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. §§ 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: July 10, 2015