

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN WOVEN TEXTILE
FABRICS AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-976 (Rescission)

**NOTICE OF COMMISSION DECISION TO INSTITUTE A RESCISSION
PROCEEDING AND TO GRANT A PETITION FOR RESCISSION OF
A GENERAL EXCLUSION ORDER AND SEIZURE AND FORFEITURE ORDERS;
RESCISSION OF A GENERAL EXCLUSION ORDER AND SEIZURE AND
FORFEITURE ORDERS; TERMINATION OF RESCISSION PROCEEDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to institute a rescission proceeding in the above-captioned investigation and rescind the general exclusion order (“GEO”) and seizure and forfeiture orders (“SFOs”) previously issued in the investigation. The GEO and SFOs are hereby rescinded, and the rescission proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 18, 2015, based on a supplemented and twice-amended complaint filed by AAVN, Inc. of Richardson, Texas (“AAVN”). 80 FR 79094 (Dec. 18, 2015). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (“section 337”), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain woven textile fabrics and products containing same, by reason of infringement of claims 1-7 of U.S. Patent No. 9,131,790 and/or by reason of false advertising. The notice of investigation named fifteen respondents. In the course of the investigation, fourteen of the named respondents were terminated from the investigation based upon settlement

or entry of a consent order. *See* Order No. 21 at 2-3 (Nov. 10, 2016) (summarizing the procedural history of the investigation). The last remaining respondent was Pradip Overseas Ltd. of Ahmedabad, India (“Pradip”). The Office of Unfair Import Investigations (“OUII”) was also named as a party.

AAVN accused Pradip of false advertising, specifically alleging that Pradip misrepresented the thread count of sheets manufactured in India, imported into the United States, and sold in United States department stores. Second Am. Compl. ¶¶ 39-41, 80 (Nov. 12, 2015); *id.* at Ex. 46 (“800 Thread Count” sheets measured at 252.7 threads). Although Pradip responded to the complaint, Pradip later terminated its relationship with its attorneys and represented that it would not participate in the remainder of the investigation. *See* Order No. 14 at 1 (Apr. 19, 2016); *see also* 19 CFR 210.17 (failure to act).

On September 2, 2016, AAVN moved for leave to file a motion for summary determination of violation. The summary determination motion that was appended argued, *inter alia*, that Pradip had violated section 337 by falsely advertising the thread count of its imported sheets and that the false advertising was deceptive, material, and injurious to AAVN. AAVN sought a GEO and a 100 percent bond during the period of Presidential review. *See* 19 U.S.C. 1337(d)(2), (j)(3). Pradip did not respond, allowing the ALJ to draw adverse inferences against Pradip. *See* 19 CFR 210.17(c). On November 10, 2016, the ALJ issued an initial determination (Order No. 21) granting the motion for summary determination. The ID finds that AAVN had shown a violation of section 337 by reason of false advertising under section 43 of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B). Order No. 21 at 7-9, 13-15. As to remedy, citing section 337(d)(2), 19 U.S.C. 1337(d)(2), which sets forth the test for issuance of a GEO, *id.* at 16, the ALJ found that “the evidence shows a widespread pattern of violation of Section 337,” *id.* at 17. The ALJ also found that “the evidence shows that it is difficult to identify the source and manufacturers of the falsely advertised products,” because “U.S. retailers fail to identify the manufacturer, importer or seller of the textile products at the point of sale.” *Id.* at 18. Nor do import records “reveal the names of the original manufacturers of the materials used to construct the imported products.” *Id.* Accordingly, the ALJ found “that the evidence shows that it is difficult, if not impossible, to identify the sources of the falsely advertised goods.” *Id.* Based on these findings the ALJ recommended the issuance of a GEO. *Id.*

On December 20, 2016, the Commission issued a notice of a determination not to review Order No. 21, resulting in a finding of a violation of section 337, and requesting written submissions on remedy, the public interest, and bonding. 81 FR 95195-96 (Dec. 27, 2016). On January 6, 2017, AAVN and OUII filed submissions on these issues. On January 13, 2017, OUII filed a reply to AAVN’s submission. No other submissions were received.

On March 20, 2017, the Commission issued a GEO prohibiting the entry of certain woven textile fabrics and products containing same that are falsely advertised through a misrepresentation of thread count. 82 FR 15,067 (Mar. 24, 2017). The Commission found that the statutory requirements for relief under section 337(d)(2), 19 U.S.C. 1337(d)(2), were met and that the public interest factors enumerated in section 337(d)(1), 19 U.S.C. 1337(d)(1), did not preclude issuance of the statutory relief. 82 FR at 15,068.

Subsequent to the issuance of the GEO, the Commission issued twelve SFOs pursuant to section 337(i)(1), 19 U.S.C. 1337(i)(1). *See* EDIS Doc. ID Nos.: 668965; 668969; 668972; 668977; 668980; 668982; 668984; 676164; 676169; 681551; 681554; and 728320.

On February 3, 2021, AAVN filed a petition to rescind the GEO and SFOs (“AAVN Pet.”). AAVN contends that it disagrees with the testing protocol used by Customs and Border Protection to determine whether imported articles falsely advertise their thread counts. AAVN Pet. at 2. In particular, AAVN contends that the methodology is too strict as compared to alleged testing conducted by independent testing laboratories. *Id.* at 2-3. AAVN further contends that the “exclusion of goods, including from AAVN’s licensees and customers, even after qualified independent testing labs have confirmed the accuracy of those authorized products’ thread counts, harms AAVN’s business and its standing with reputable importers.” *Id.* at 3. AAVN recognizes that the GEO was originally issued to redress substantial injury to AAVN, 19 U.S.C. 1337(a)(1)(A), but states that “AAVN is ultimately in the best position to evaluate injury to itself,” and that rescission of the Commission remedial orders (the GEO and the SFOs issued pursuant to it) “would be less injurious to [AAVN] than continued enforcement of the GEO.” AAVN Pet. at 3. AAVN asserts that rescission of the GEO “may in practice result in rescission of all SFOs in this Investigation,” but that at least it seeks “rescission of the December 17, 2020 SFO,” EDIS Doc. ID 728320. AAVN Pet at 3 n.2. On February 16, 2021, the Office of Unfair Import Investigations (“OUII”) responded in opposition to the petition.

Having reviewed the petition, the opposition thereto, and the record of the investigation, the Commission has determined that the petition complies with Commission Rule 210.76, 19 CFR 210.76. The Commission has determined to institute a rescission proceeding and to grant the petition. Pursuant to section 337(k)(1), an exclusion order “shall continue in effect until the Commission finds . . . that the conditions which led to such . . . order no longer exist.” 19 U.S.C. 1337(k)(1); *see also* 19 CFR 210.76(a)(1). AAVN’s petition alleges that the exclusion of articles pursuant to the GEO exacerbates rather than redresses any injury it faces from imports. Thus, the conditions that led to the issuance of the GEO no longer exist, and the Commission has determined to rescind the GEO. Because an SFO requires a predicate exclusion order, there is no basis to continue enforcement of SFOs after rescission of the underlying GEO. *See* 19 U.S.C. 1337(i)(B) (“the article was previously denied entry into the United States by reason of an order issued under subsection (d)”). Accordingly, all SFOs in this investigation are likewise rescinded. The rescissions are effective as of the date of the Order issued herewith.

The rescission proceeding is terminated. The GEO and all SFOs are rescinded.

The Commission vote for this determination took place on March 4, 2021.

The authority for the Commission's determinations 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 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton
Secretary to the Commission

Issued: March 4, 2021